

# Sunshine Act Meetings

Federal Register

Vol. 52, No. 63

Thursday, April 2, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 10:00 a.m., April 15, 1987.

**PLACE:** 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Proposed rule amendments submitted by the Chicago Board of Trade authorizing an evening trading session.

### CONTACT PERSON FOR MORE

**INFORMATION:** Jean A. Webb, 254-6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87-7345 Filed 3-31-87; 11:20 am]

BILLING CODE 6351-01-M

## COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 10:30 a.m., April 15, 1987.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

### MATTERS TO BE CONSIDERED:

Enforcement Matters.

### CONTACT PERSON FOR MORE

**INFORMATION:** Jean A. Webb, 254-6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87-7346 Filed 3-31-87; 11:20 am]

BILLING CODE 6351-01-M

## COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 10:00 a.m., April 22, 1987.

**PLACE:** 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

**STATUS:** Open.

### MATTERS TO BE CONSIDERED:

Application of the Philadelphia Board of Trade for designation as a contract market in Australian Dollar Futures

Application of the New York Cotton Exchange for designation as a contract market in the Five-Year U.S. Treasury Index

### CONTACT PERSON FOR MORE

**INFORMATION:** Jean A. Webb, 254-6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87-7347 Filed 3-31-87; 11:20 am]

BILLING CODE 6351-01-M

## COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 11:00 a.m., April 22, 1987.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

### MATTERS TO BE CONSIDERED:

Enforcement Matters.

### CONTACT PERSON FOR MORE

**INFORMATION:** Jean A. Webb, 254-6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87-7348 Filed 3-31-87; 11:20 am]

BILLING CODE 6351-01-M

## COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 11:30 a.m., April 24, 1987.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

### MATTERS TO BE CONSIDERED:

Sales Practice Reviews.

### CONTACT PERSON FOR MORE

**INFORMATION:** Jean A. Webb, 254-6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87-7349 Filed 3-31-87; 11:20 am]

BILLING CODE 6351-01-M

## FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 87-6701.

### PREVIOUSLY ANNOUNCED DATE AND TIME:

Thursday, April 2, 1987, 10:00 a.m.

The following item has been withdrawn from the Agenda: Proposed Financial Control and Compliance Manual for Presidential primary candidates receiving public financing.

\* \* \* \* \*

**DATE AND TIME:** Tuesday, April 7, 1987, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

### ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

\* \* \* \* \*

**DATES AND TIME:** Thursday, April 9, 1987, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC. (Ninth Floor).

**STATUTES:** This meeting will be open to the public.

### MATTERS TO BE CONSIDERED

Setting of Dates for Future Meetings.

Correction and Approval of Minutes.

Public Financing of Presidential Candidates—

Revised draft of Proposed Rules.

Routine Administrative Matters.

### PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

*Secretary of the Commission.*

[FR Doc. 87-7396 Filed 3-31-87; 2:24 pm]

BILLING CODE 6715-01-M



# Corrections

Federal Register

Vol. 52, No. 63

Thursday, April 2, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, and 529

### Animal Drugs, Feeds, and Related Products; Change of Sponsor; Labeler Code Correction

#### Correction

In rule document 87-5378 beginning on page 7831 in the issue of Friday, March 13, 1987, make the following correction:

On page 7831, in the table, in the second column, in the tenth entry, "(intment)" should read "Ointment".

BILLING CODE 1505-01-D

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 968

[Docket No. R-87-1308; FR-2262]

### Indian Housing Program and Comprehensive Improvement Assistance Program—Cost Containment

#### Correction

In proposed rule document 87-2854 beginning on page 4349 in the issue of Wednesday, February 11, 1987, make the following correction:

On page 4349, in the third column, in SUPPLEMENTARY INFORMATION, in the second paragraph, in the last line, the FR citation should read "51 FR 33898".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AZ-940-07-4212-12; A-20347-B]

### Exchange of Public and State Lands in Arizona

#### Correction

In notice document 87-3427 beginning on page 5193 in the issue of Thursday,

February 19, 1987, make the following corrections:

1. On page 5193, in the second column, in the 26th line from the bottom of the page, "SW 1/2" should read "SW 1/4".

2. On the same page, in the third column, in the 28th line, the first "SE 1/4" should read "SW 1/4".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Customs Service

19 CFR Part 133

[T.D. 87-40]

### Customs Regulations Amendments Relating to Copyrights

#### Correction

In rule document 87-6486 beginning on page 9471 in the issue of Wednesday, March 25, 1987, make the following correction:

§ 133.42 [Corrected]

On page 9475, in the third column, in § 133.42(c), in the 10th line, "§ 133.42(a)" should read "§ 133.43(a)".

BILLING CODE 1505-01-D

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Thursday  
April 2, 1987

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## Part II

## Department of the Interior

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### National Park Service

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36 CFR Parts 1, 2, 4, 7, and 34  
Vehicles and Traffic Safety; Final Rule



## DEPARTMENT OF THE INTERIOR

## National Park Service

## 36 CFR Parts 1, 2, 4, 7, and 34

## Vehicles and Traffic Safety

AGENCY: National Park Service, Interior.

ACTION: Final rule.

**SUMMARY:** This rulemaking revises the National Park Service's (NPS) regulations pertaining to vehicles and traffic safety. The existing regulations have not been revised significantly since 1966 and are outdated in many respects. The final rule reflects the fact that the NPS generally considers the respective States to be the appropriate authorities to regulate traffic, and relies heavily on the adoption of State vehicle codes. The other objectives of this rulemaking are: (1) To delete unnecessary general and special regulations; (2) to eliminate the remaining references to the management categories formerly used to classify park areas; and (3), to make use of and expand the discretionary authority provided park superintendents in other NPS general regulations to protect resources and provide for public safety. These revised traffic regulations are limited to those that address problems or situations that are not addressed by individual State vehicle codes in a manner consistent with NPS agency missions and program objectives and to those that reflect a need to apply a consistent Servicewide regulatory approach. The results of this revision will provide a consistent, yet flexible approach to the management of traffic in park areas in the interests of public safety and the protection of park resources and public and private property.

**EFFECTIVE DATE:** June 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Andy Ringgold, National Park Service, Branch of Ranger Activities, P.O. Box 37127, Washington, DC 20013-7127, Telephone: 202-343-1360.

**SUPPLEMENTARY INFORMATION:****Background**

The NPS administers 337 park areas throughout the country under the broad statutory mandates to promote and regulate their use; to conserve the scenery, the natural and cultural objects and the wildlife therein; and to provide for their enjoyment in such manner as will leave them unimpaired for the enjoyment of future generations. Facilities developed by the NPS in park areas, including roads, are limited to those necessary to carry out these legislative mandates and to support the

purposes of the individual park areas as defined by Congress.

Although visitors to the National Park System use a variety of access methods, the vast majority continue to rely on motor vehicles and roadways to reach park areas and to circulate within them. Consequently, the NPS has major program responsibilities in the areas of road construction and maintenance, traffic safety and traffic law enforcement.

The NPS currently administers almost 8,000 miles of roads within the National Park System that are open to the public. There is great variety in the nature and extent of park roads, ranging from very short lengths of unpaved secondary roadways, to well-developed road systems complete with spur roads, parking areas and overlooks, to parkways running for hundreds of miles through several states, to parkways used primarily as commuter routes in the Washington, DC area. Although the types of roadways vary, their designs are generally consistent with the policy of providing the public safe, but low profile, low impact and low speed road access that blends into its natural surroundings. NPS roads are intended to facilitate and enhance a visitor's leisurely enjoyment of a park area, not to detract from it. As a result, park roads generally relate simply and harmoniously with the topography and environment and are often more narrow and winding than roads outside parks that are designed to facilitate the movement of vehicles in the most direct and expeditious manner.

NPS general regulations pertaining to vehicles and traffic safety are codified in Title 36 of the Code of Federal Regulations (36 CFR) Part 4. These regulations apply to all units of the National Park System. Special regulations pertaining to traffic that apply only to individual park areas are codified in 36 CFR Part 7 and supplement provisions of the general regulations. The general regulations in Part 4 were last revised significantly in 1966. The evolution of the National Park System, new statutory authorities and directions, changes in vehicle technology and designs, modifications in recreation and visitation patterns and the general strengthening of State vehicle codes since then have all contributed to rendering many of the existing NPS regulations unnecessary, ineffective and/or otherwise outdated. This rulemaking represents an effort on the part of the NPS to strengthen its overall traffic safety program and, in the process, to update and clarify certain of its traffic regulations and delete others that are unnecessary.

Unnecessary regulations are those whose provisions are duplicated by the respective State vehicle codes or those that contain provisions that can be imposed by park superintendents without a rulemaking, using discretionary authority provided by general regulations promulgated in 1984 and codified elsewhere in 36 CFR. The existing regulations in Part 4 that are being deleted or restructured as part of this rulemaking are listed in the Organizational Summary found later in this document. The NPS is also deleting from Part 7 a number of special regulations that have been rendered unnecessary by other provisions of this rulemaking and is making minor revisions to provisions in Part 34 that cross-reference regulations in Part 4. Further discussion on these matters is found in the Section-by-Section Analysis portion of this document.

The NPS intends that the foundation of its vehicle and traffic safety regulations be the nonconflicting provisions of the respective State vehicle codes, which are adopted in § 4.2. NPS regulations supplementing those codes are limited to ones that are necessary to resolve visitor safety and/or resource protection concerns that cannot be satisfied on a Servicewide basis by applying and enforcing State vehicle code provisions.

**Summary of Public Comments**

The NPS published a proposed rule in the Federal Register on June 16, 1986 (51 FR 21840), with a sixty-day period provided for public review and comment. That rulemaking was based largely on suggestions submitted by NPS field managers and their staffs and their suggested changes to a draft of the rule that was circulated for Servicewide internal review in the fall of 1985. This final rule reflects further refinements and changes made as a result of public and internal NPS comments received during the comment period.

The NPS received a total of 148 timely written comments in response to publication of the proposed rule. Comments were received from 11 individuals, 7 organizations, 14 representatives of the legal/judicial communities and 116 offices or individuals within the NPS. No comments were received from State agencies.

**Analysis of Comments**

The following section of this rulemaking contains details of the comments received, the NPS response to the issues raised by commenters and general descriptions of any revisions



made to the regulatory text as a result. A detailed discussion of the text and the regulatory intent of the final regulations, including revisions made to the proposed rule, appears in the Section-by-Section Analysis of this rulemaking. Unless otherwise noted, section numbers used in these discussions refer to the section numbers used in the final rule.

#### *Miscellaneous/General Comments*

The NPS received a number of comments of an editorial nature, most of which were adopted. One comment was received objecting in general to the deletion of references to administrative categories from NPS regulations because of the commenter's feeling that such action has resulted in a more restrictive approach to the management of recreation areas. The last remaining references to the categories of natural, historical and recreation areas, formerly used to classify park areas for purposes of guiding management, protection and visitor use activities, were found in the former NPS regulation pertaining to bicycles (36 CFR 4.3). As explained in the proposed rule, the NPS ceased using these categories in 1978 and subsequently removed all references to them from its Management Policies (1978) and general regulations (1983-84). The question whether or not to reinstitute the use of these administrative categories for purposes of managing park areas is an issue outside the scope of this rulemaking. The references to these categories have been deleted from the bicycle regulation in the final rule (§ 4.30).

Several comments were received that pertained to regulations in 36 CFR Parts 2, 3 and 5 that were not reviewed as part of the proposed rule. The NPS did not consider these comments since they addressed issues that were clearly outside the scope of this rulemaking. Another comment suggested that the NPS seek legislation to revise the penalty provisions that apply to NPS regulations. The NPS has attempted to do so on several occasions, without success.

A comment that suggested developing a regulation pertaining to mopeds was also not adopted. At this time there is no demonstrated need for a general regulation addressing the use of such vehicles. Superintendents who are faced with problems involving these vehicles may apply State law and/or establish conditions for their use under the authority of 36 CFR 1.5.

Finally, one commenter pointed out that the proposed rule did not include a consideration of whether the regulations in Part 4 would apply on non-federal

lands within park areas. The commenter suggested that, in order to provide necessary public safety services on non-federal roads where the NPS is the only reasonable source available for such services, all of the regulations in Part 4 should be made applicable to such lands. The NPS gave this suggestion serious consideration and has adopted it in the final rule as section 4.1. The regulations in Part 4 have been made applicable on all roadways and parking areas within park areas that are under the legislative jurisdiction of the United States and that are open to public traffic, i.e. those that are located on lands within a park area that are not owned or administered by the NPS but over which the State has ceded to the NPS either concurrent or exclusive jurisdiction. However, the NPS intends that the enforcement of these regulations on nonfederal lands be limited to actions necessary to provide essential public safety services to the public and the landowner. The inclusion of this new section has resulted in the renumbering of §§ 4.1, 4.2 and 4.3 of the proposed rule to 4.2, 4.3 and 4.4, respectively, in the final rule.

#### *Part 1—General Provisions*

##### *Section 1.2(e) Applicability and scope.*

This paragraph was proposed as § 1.2(f), but a rulemaking that has been completed in the interim has removed another paragraph in this section and resulted in a redesignation of this paragraph. The NPS received numerous comments pertaining to this paragraph, all of which supported the proposal, but many of which urged that the terms "standard non-motorized or motorized wheelchair" be defined. Another person suggested that the term "physically handicapped" was too broad when applied to persons that require a wheelchair for locomotion and that the term "mobility-impaired" was more appropriate. The NPS has adopted these suggestions in the final rule, using the terms "mobility-impaired", "manual wheelchair" and "motorized wheelchair" in this paragraph and defining the last two terms in § 1.4.

##### *Section 1.4 Definitions.*

Two comments were received addressing definitions other than wheelchairs. One commenter suggested defining the term "alcoholic beverage", another the term "motor vehicle accident". The NPS considers these common terms easily and consistently understood and, as used in the final rule, not necessary to define.

##### *Section 1.8 Information collection.*

One commenter indicated that § 4.4 had been omitted from the list of information collection references in this section. It has been included in the final rule.

#### *Part 2—Resource Protection, Public Use and Recreation*

##### *Section 2.18 Snowmobiles.*

Only one comment was received pertaining to this section, a suggestion that § 4.21 be included in the list of regulations in Part 4 that apply to the operation of a snowmobile. The NPS agrees with this suggestion as a means of improving public safety programs in winter recreation areas and has revised this section accordingly.

##### *Section 2.33 Report of injury or damage.*

The comments that pertained to this section addressed two issues: that the relationship between this section, § 3.4, and § 4.4 was confusing and that the \$100 damage threshold for reporting an incident was too low. In the final rule the NPS has attempted to clarify the fact that § 2.33 applies to the reporting of incidents other than motor vehicle accidents and boating accidents by revising the text of § 2.33 and revising the heading of § 4.4. The threshold for reporting incidents resulting in property damage was raised to \$300 to encourage the reporting of significant incidents but to alleviate the existing burden on park visitors to report minor ones.

##### *Section 2.35 Alcoholic beverages and controlled substances.*

One commenter suggested that the NPS take steps to phase out the sale of alcoholic beverages in all park areas. Such action was viewed as being much more restrictive than necessary in order for the NPS to manage public safety problems that occur as a result of alcohol consumption in park areas.

Several comments were received suggesting additions to the list of specific public use areas within a park area that can be closed by the superintendent to the consumption of alcoholic beverages. After reviewing the existing list and the suggested additions, the NPS has reworded this section using the phrase "all or a portion of a public use area or public facility" to replace the detailed listing of specific locations and types of public use sites within a park area that can be closed by a superintendent after meeting the prerequisite conditions of this regulation. However, the scope of this



particular closure authority remains less than parkwide.

Another commenter pointed out the difficulty of enforcing a closure pertaining solely to the consumption of alcoholic beverages and described the fine line that can be drawn between a person actually consuming an alcoholic beverage and one merely carrying an open container of an alcoholic beverage but not observed in the act of drinking. This commenter suggested that, if incidents of aberrant behavior related to alcohol consumption in an area have reached the proportions required to justify a closure under this section, the superintendent should also have the discretion to prohibit carrying an open container of an alcoholic beverage as well. The NPS agrees with this suggestion in that there would be no additional burden imposed on the public if, in an area already closed to the consumption of alcoholic beverages because of incidents related to alcohol abuse, the area is also closed to the possession of an open container of an alcoholic beverage. Such additional closure authority would benefit public safety programs, contribute to greater enjoyment of park facilities by visitors and facilitate NPS enforcement efforts. This section has been revised to add this closure authority and to cross-reference the conditions in section 4.14 under which an open container may legally be stored in a motor vehicle in an area closed to the possession of an open container pursuant to this section.

#### *Part 4—Vehicles and Traffic Safety*

##### *Section 4.2 State law applicable.*

One commenter expressed concern that the regulations, with their heavy reliance on adopting State law, would increase the workload of attorneys prosecuting cases in Federal court because of their general unfamiliarity with State law. Since both the existing regulations and this revision contain provisions adopting State law, the NPS does not anticipate a significant increase in attorney workload. The number and the relative complexity of existing NPS regulations in Part 4 that are being deleted in this rulemaking in favor of adopting corresponding sections of State law are not significant.

Another commenter suggested that adopting State law alone did not provide regulations that were broad enough in scope, but that local laws should be adopted as well. The term "State law" as defined in § 1.4 includes regulations of State political subdivisions.

One commenter suggested that the NPS adopt applicable tribal law within

park areas that are located within the exterior boundaries of Indian reservations. The NPS considers State law and NPS regulations adequate to govern traffic safety programs in those areas and intends that they apply to all persons and vehicles within those parks.

Several commenters requested clarification of the NPS authority used to adopt State law and questioned applying NPS penalty provisions to violations of State laws that might have different penalty provisions attached. Discussions of these issues are found in the Section-by-Section Analysis of this rulemaking.

##### *Section 4.3 Authorized emergency vehicles.*

Several comments were received that suggested requiring that authorized emergency vehicles be operated and equipped in compliance with NPS policies and standards. This section was developed to establish basic requirements for the operation of authorized emergency vehicles (as defined in section 1.4) and to provide their operators a limited number of qualified exemptions from traffic regulations that are considered essential in order for them to carry out their public safety responsibilities. Beyond these provisions, the operators of NPS emergency vehicles must comply with NPS policy, the operators of emergency vehicles owned by other Federal agencies must comply with their respective agency policies and the operators of emergency vehicles owned by State agencies and private organizations must comply with State law and their respective agency/organization policies. Vehicles must also be equipped in accordance with respective agency policies and for non-Federal vehicles, in accordance with State law. A requirement that all operators and vehicles be bound by NPS policies was considered unnecessary and inappropriate.

Several other commenters expressed concern that this section did not adequately stress the operator's responsibility to consider individual and public safety. The NPS feels that the provision requiring the operator to give due regard for the safety of persons and property is a reasonable condition to impose on operators of emergency vehicles and provides appropriate levels of protection for the public, the operator and property. This section is published unchanged.

##### *Section 4.4 Report of motor vehicle accident.*

The heading of this section was revised in response to requests to clarify

the difference between the accident reporting requirements of this section and those of § 2.33. Several commenters suggested revising the text of this section to focus on the moving of a vehicle involved in an accident, not just its towing, and to clarify reporting responsibilities in cases when the operator is incapacitated. Other commenters pointed out that there are certain conditions under which it is appropriate and/or necessary for an operator to move a vehicle that has been involved in an accident and that the regulation did not provide such flexibility. The NPS has adopted these suggestions and has revised this section to reflect these concerns.

Three comments were received suggesting that various damage thresholds be established for the reporting of motor vehicle accidents. The NPS agrees that a requirement to report all motor vehicle accidents regardless of the amount of property damage involved may sometimes cause inconvenience for vehicle operators involved in minor accidents. However, this inconvenience is outweighed by the benefits to the operators involved of assuring that appropriate identification and insurance information is exchanged and to park visitors in general that all information that could be useful in identifying and correcting traffic engineering and safety problems in a park area is made available to the superintendent. Requiring an operator to report a minor vehicle accident does not carry a corresponding requirement that a detailed accident investigation be conducted by NPS personnel; basic information pertaining to such accidents can be recorded very easily. The final rule was not revised in this respect.

A suggestion that this section be revised to address operators' leaving the scene of an accident and operator responsibilities following a collision with an unoccupied vehicle was not adopted because such provisions are addressed by State law.

##### *Section 4.10 Travel on park roads and designated routes.*

Two commenters opposed the provision in this section that restricts the designation of routes for off-road vehicle (ORV) use to national recreation areas, national seashores, national lakeshores and national preserves, stating that this provision unreasonably restricts opportunities for visitors to enjoy some park areas and is inconsistent with the earlier NPS decision to eliminate the use of administrative categories to manage park areas. The references to these



types of park areas are found in the former regulation pertaining to ORV use (§ 4.19) and were originally included in a 1974 rulemaking when the NPS revised its regulations to comply with the provisions of Executive Order 11644, which still governs ORV use on public lands. At that time the NPS used the administrative categories of park areas (natural, historical and recreational) to guide the management of park areas. The NPS determined that in order to comply with the provision of the Executive Order limiting the designation of ORV routes in units of the National Park System to areas where such use would not adversely affect their natural, aesthetic or scenic values, the designation of ORV routes could take place only in recreation areas. When the NPS decided no longer to use the administrative categories as management tools, this had no effect on the original determination made concerning the areas where ORV use could take place without adversely affecting park values. ORV use is an appropriate use of park areas that were established to provide recreational opportunities for the public, when that recreational activity is managed to provide for the protection of park resources and visitors. National recreation areas, seashores, lakeshores and preserves are park areas that have been established by Congress not only to conserve their natural, historic and scenic values, but also to provide outdoor recreational opportunities for visitors. ORV use may be appropriate in those areas, but not in park areas whose primary purposes, as established by Congress, do not include outdoor recreation. This provision remains in the final rule but results in no greater restriction on ORV use than has existed since 1974.

A suggestion was received to address vehicles that are parked outside of designated areas. This proposal was not adopted since a vehicle first must be operated outside of a designated area in order to be parked there.

One commenter objected to the word "unreasonable" as used in paragraph 4.10(c)(2) as being vague. The NPS intends this term, when used to describe damage to a park road or route, to mean damage to a degree beyond that which would ordinarily be expected under conditions existing at the time.

Concerns were also expressed that this regulation does not address licensing or registration requirements for off-road vehicles and their operators nor the operation on park roads of vehicles that are not street-legal. The NPS intends that such issues be resolved by

applying State law or, if State law does not adequately address the local situations faced by individual park managers, that the discretionary authority provided superintendents in 36 CFR 1.5 to impose closures, conditions or restrictions on a use or activity be used to manage these activities.

Finally, one commenter pointed out that Executive Order 11644 authorizes the designation of areas for ORV use, not just routes. The NPS agrees and has added this term to the text of the final rule to assist individual park managers in describing in special regulations specific locations that are open to ORV use but that do not lend themselves to designation in terms of well-defined routes. However, this change is a clarification of terms only and does not reflect a relaxation of NPS policies pertaining to the management of ORV use.

#### *Section 4.11 Load, weight and size limits.*

No comments were received concerning this section; its text is published unchanged.

#### *Section 4.12 Traffic control devices.*

No comments were received concerning this section; its text is published unchanged.

#### *Section 4.13 Obstructing traffic.*

Two comments were received from persons who felt that the proposed rule was more restrictive than the existing regulation in that it prohibits stopping a vehicle on a park road except where authorized rather than allowing stopping except where prohibited. However, that is not the case. Both versions are similar, but the proposed rule provides greater discretion to superintendents (as defined in § 1.4) to allow a vehicle to stop on a park road. The superintendent's authorization need not take the form of a sign; a ranger's decision to allow a vehicle operator to stop on a park road to take a photograph also constitutes authorization by the superintendent. But if the same action by the operator creates a hazard or interferes with traffic flow, the ranger may use this section as the basis for action to resolve the situation.

Another commenter felt that the phrase "interfere with the normal flow of traffic" was too general and should include a qualifying provision addressing a specific number of vehicles being backed up or delayed. The NPS feels that such a provision would be too rigid, would not allow for the variety of types of roads and road conditions found within the National Park System and would conflict unnecessarily with

provisions of State vehicle codes. The regulation as written provides an appropriate degree of flexibility that is necessary to manage traffic effectively within park areas. This section is published unchanged.

#### *Section 4.14 Open container of alcoholic beverage.*

This section has been changed in response to suggested improvements submitted by several persons. The first suggestion implemented was to address the carrying or storing of an open container within a motor vehicle anywhere in a park area rather than limit the scope of this section to a vehicle upon a park road, parking area or designated off-road vehicle route. Another revision clarifies the fact that the NPS intends the prohibitions of this section to apply to an open container carried in the living quarters of a motor home or camper but not to an open container that is stored in such areas.

A new paragraph was also added stressing that although each occupant of a motor vehicle is responsible for complying with the provisions of this section that pertain to carrying an open container, the motor vehicle operator is the person responsible for complying with the open container storage provisions of this section. This provision was added to assign responsibility for an unlawful open container in a motor vehicle that is not being carried by any of the vehicle occupants.

An exemption was discussed in the preamble of the proposed rule but was not included in the original regulatory text of this section, authorizing a person to carry an open container in a motor vehicle when the vehicle is parked at a campsite. This provision has been clarified and also included as a new paragraph in the final rule as a result of a comment submitted.

Finally, the phrase "readily accessible to" was added in response to a suggestion to describe more clearly the areas within a motor vehicle that are near the vehicle's occupants and that are considered unsuitable for storage of an open container.

One commenter pointed out that prohibiting the carrying of an open container but not an empty container of an alcoholic beverage might encourage a person to consume the entire contents of a container to avoid the possibility of violating this section. Although this situation might occur occasionally, the NPS does not feel that a detailed NPS regulation describing the conditions under which empty containers may be carried or stored in a motor vehicle is necessary or appropriate. The NPS



intends to leave the issue of carrying and storing empty containers of alcoholic beverages to be addressed by State law.

The final version of this section has been reorganized significantly to accommodate the revised text.

*Section 4.15 of the proposed rule: Safety belts.*

The NPS received numerous comments pertaining to this section, the vast majority of which opposed promulgation of this regulation. Reasons given for opposition included individual philosophical grounds, inappropriate federal role, conflicts created with State law, the absence of a demonstrated NPS need, and deviation from the basic NPS objective as stated in the proposed rule to use State law as the basis for NPS traffic regulations.

Since publication of the proposed rule a number of additional states have enacted mandatory safety belt legislation; over half of the states have now enacted legislation that is either in effect or that will go in effect in 1987. All states have mandatory child restraint laws in effect. These provisions of State law apply within park areas located in those states and can be adopted by the NPS under § 4.2. As additional states enact safety belt laws, they too can be adopted by the NPS.

The NPS has reevaluated this section of the proposed rule, concentrating particularly on the need for it, the creation of conflicts with State law and the effects of those conflicts on visitors and NPS enforcement staffs. The NPS supports the use of appropriate restraint systems by vehicle occupants but agrees that there is no greater need for the use of restraints within park areas than exists outside parks. As proposed, the NPS regulation would have superceded State law pertaining to safety belts in park areas located within states with mandatory safety belt legislation in effect and also would have applied in park areas located within states without safety belt legislation. Significant conflicts would have been created in both types of situations. On one hand, park visitors would have been faced with a federal regulation that differed from the State law in effect outside the park, with no apparent need for the discrepancy. NPS staffs would have been faced with the task of informing park visitors of the existence of the different federal regulation and with enforcing its provisions. On the other hand, park visitors would have been subject to a unique federal regulation, with no similar requirement in effect outside the park, and with no apparent need for its existence. Serious conflicts

and management problems would result in both types of situations, with many NPS staffs faced with the tasks of providing notice to visitors and enforcing the NPS regulation in park areas with multiple access roads or on access roads that wind in and out of park areas.

Given the stated NPS position that the respective states are generally the appropriate authorities to regulate traffic, the absence of a need for a restraint requirement that is specific to occupants of vehicles within park areas and the conflicts and confusion for both visitors and NPS staffs that a NPS safety belt regulation would create, the NPS has omitted this regulation from the final rule and will rely on the individual states to determine whether mandatory safety belt legislation is needed and appropriate. Where such legislation is enacted, the NPS will enforce its provisions in park areas under 36 CFR 4.2.

*Section 4.20 Right of way.*

Three comments were received pertaining to this section. The NPS has adopted a suggestion to include dog sleds as a vehicle to which a motor vehicle operator must yield the right of way by including the phrase "vehicles drawn by animals". The NPS did not adopt a suggestion to include authorized emergency vehicles since that issue is adequately addressed by State law.

One commenter pointed out hazards associated with mixing motor vehicle traffic with other traffic and suggested that encouraging such use by providing the right of way to non-motor vehicle traffic was inadvisable. This section does not provide blanket authorization for pedestrian traffic, stock, or vehicles drawn by animals to mix indiscriminately with motor vehicle traffic. The superintendent retains both the authority and the responsibility to regulate these activities in the interest of public safety; however, where they are authorized in the same location, this section establishes who must yield the right of way.

*Section 4.21 Speed limits.*

Very few comments were received concerning this section. One person suggested including park tour roads in the category of park roads having a 25 mph speed limit. This is not necessary since the superintendent has the authority to establish speed limits other than those specified in paragraphs (a) (1) through (3). Another person suggested prohibiting the use of radar detectors. The NPS has decided that this is an issue that should be addressed by State law.

A commenter also suggested that the basic speed limits described in paragraphs (a) (1) through (3) are policies provided for the guidance of superintendents that should not be codified in the CFR. Although these limits do serve as basic policy, they also provide a Servicewide standard for speed limits on similar types of park roads. The NPS feels that having these standards codified in regulations helps achieve consistency in establishing speed limits throughout the National Park System and provides appropriate notice to vehicle operators and other interested persons concerning basic speed limits in park areas. The text of this section remains unchanged.

*Section 4.22 Unsafe operation.*

Three comments addressed this section. One opposed the provision allowing persons to ride on the floor of a truck bed equipped with sides as being an unsafe activity that conflicted in principle with the concern for safety reflected in the provision that required all occupants of a motor vehicle to wear a safety belt. Although the NPS recognizes that persons seated in such a manner may be at risk in case of collision, this method of riding in a truck is very common and accepted in many areas of the country. The NPS has retained this provision in the final rule, but conditioned it so as not to conflict with State law.

Another commenter pointed out that there are some conveyances such as trams and other specialized trailers that are designed specifically for carrying passengers while being towed and suggested that the prohibition in paragraph (b)(4)(i) be modified to provide for such vehicles. The NPS agrees and has revised this paragraph accordingly.

*Section 4.23 Operating under the influence of alcohol or drugs.*

All comments submitted pertaining to this section supported the regulation but many suggested improvements or requested clarifications of certain provisions. Also in response to a comment, the NPS has made minor editorial changes in several paragraphs to eliminate text that provided instructions to the judiciary. That text is appropriate in provisions passed by a legislative body but not in a regulation promulgated by an executive agency. Those provisions now are worded to reflect the NPS regulatory intent instead.

The NPS has slightly revised the definition of the term "operator" in § 1.4 of the final rule in response to suggestions submitted to include



consideration of the person who is in actual physical control of a motor vehicle. Rather than insert this phrase in several paragraphs in § 4.23, the NPS has revised the term "operator" to include the person who is in actual physical control of a motor vehicle. The term "operator" is now applicable whether the vehicle is in motion or not.

One commenter stated that the NPS was imposing an unnecessary burden of proof by requiring in paragraph (a)(1) a showing that the operator is incapable of safe operation. The NPS feels that this term is an important element of this paragraph and should be the focus of investigative and prosecution efforts to prove that a motor vehicle operator is operating under the influence. This element can be shown through descriptions of personal and witness observations, physical evidence and the results of field tests and quantitative tests.

A number of commenters expressed concern about potential confusion and administrative complications arising in situations where State law establishes more restrictive alcohol concentration levels than those established in the proposed NPS regulation. In order to prevent such situations from arising, the NPS has revised paragraph (a)(2) of the final rule to adopt alcohol concentrations established by State law *but only if they are more restrictive than the NPS levels established in that paragraph.*

Several commenters also requested clarification of the alcohol concentration levels specified in paragraph (a)(2), suggesting the inclusion of equivalent measures. The NPS recognizes that some State laws establish levels using other measures. However, the NPS has used both the standard concentrations and standard units of measure contained in the Uniform Vehicle Code. Conversion tables are readily available for the use of enforcement personnel, attorneys and U.S. Magistrates who are more familiar with other systems of measure. The applicability of equivalent measures is understood and need not be specified in the regulation.

Several commenters addressed paragraph (c) which pertains to testing, questioning whether the NPS intended the provision that prohibits refusing to submit to a test to constitute a separate violation. Others suggested that this provision be expanded to include refusal to submit to field sobriety tests as well. Another commenter suggested that the term "refusal" be replaced with the word "failure". The NPS does intend this provision to describe a prohibited action, violation of which constitutes a criminal violation that is separate from,

and in addition to, the prohibitions contained in paragraph (a). In order to clarify and emphasize this fact, the prohibitory clause has been broken out as a separate paragraph in the final rule. However, the NPS did not adopt the suggestions to expand this provision to include refusal to submit to field sobriety tests or to revise the principal element from refusal to submit to a test to failure to submit to a test. The NPS feels that it would not be appropriate or legally supportable to require a motor vehicle operator to submit to field sobriety tests. Such physical agility tests are often conducted prior to the existence of probable cause to arrest an operator for operating under the influence and contribute to establishing that probable cause. Likewise, broadening the prohibition to cover failure to submit to a test would encompass many passive situations where the operator might be unable to submit to a test for reasons beyond his or her control. The NPS intends this provision to encompass only situations where there is an active refusal by the operator to submit to a test.

Several comments concerned quantitative tests, the type of equipment used and the qualifications of the persons administering the tests. The NPS has not adopted any of the suggestions submitted that would serve to lower the standard set in the proposed rule for reliability of testing equipment and certification of equipment operators. Nor has the NPS adopted suggestions to specify exactly who may administer tests that involve drawing blood and relieving those persons of liability in connection with those activities. Those issues are addressed by State law. Liability is determined on the basis of State and Federal statutory law and is not an appropriate subject for these regulations.

Finally, several commenters questioned the usefulness of the presumptions found in paragraph (d). The NPS intends this paragraph to serve as notice to all parties concerned (vehicle operators, enforcement personnel, attorneys, judicial officials) that, although the results of quantitative tests may indicate that the alcohol concentration in the blood or breath of a motor vehicle operator is less than the limits established in paragraph (a)(2), the operator may still be convicted of violating paragraph (a)(1) based on other evidence.

#### Section 4.30 Bicycles.

Several persons submitted comments indicating that various issues involving the use of bicycles such as speeding,

reckless operation, conflicts with pedestrian use, operation against traffic, etc., were not specifically addressed by this section. The NPS intends such problems to be resolved by applying State law or paragraph (c) of this section which makes a bicycle operator subject to most of the other traffic regulations in Part 4.

Other persons suggested that the superintendent, in order to be able to respond to local problems and situations, should be provided the authority to establish special conditions or restrictions governing bicycle use. That authority is already available to the superintendent under 36 CFR 1.5.

Several commenters pointed out that there were other sections in Part 4 other than § 4.10 that did not apply to the operation of a bicycle and that should be added to paragraph (c). In response, the NPS has added several sections to this paragraph in the final rule. Section 4.14 was added to the list of regulations that do not apply to bicycle operation since the methods available for storing an open container of an alcoholic beverage on a bicycle are limited and all constitute carrying an open container. However, paragraph (d)(4) has been added to this section to replace the open container provision, prohibiting the operation of a bicycle while consuming an alcoholic beverage or while carrying in hand an open container of an alcoholic beverage.

Other comments addressed both sides of the issue regarding the provision that prohibits possession of a bicycle in a designated wilderness area. The NPS position remains as discussed in the proposed rule. Bicycles are considered a mechanical form of transport that, in addition to the use of motor vehicles and motorized equipment, is specifically prohibited in designated wilderness areas by the Wilderness Act [16 U.S.C. 1133(C)]. Paragraph (d)(1) was included in this section to reflect that prohibition and to attach a penalty to violations of this statutory provision.

Several persons questioned the need for the rulemaking requirement in paragraph (b) in order for the superintendent to designate a route for bicycle use outside of developed areas and special use zones. Although the NPS recognizes that the rulemaking process is more cumbersome and time-consuming than the local designation process favored by some persons, the NPS continues to support the rulemaking process as the decisionmaking method that provides the greatest opportunity for public review of a proposal. Since a proposal to designate a bicycle route outside of developed areas has the



potential to generate significant public interest, controversy and questions related to visitor use conflicts and environmental impacts, the NPS feels that the public involvement associated with the rulemaking process would be of great benefit to the superintendent in arriving at a decision. A decision made by local designation would not provide the superintendent the same degree of public involvement. This provision remains unchanged in the final rule.

#### Section 4.31 Hitchhiking.

The comments received in response to this section were mixed. Some persons supported a total prohibition of hitchhiking; others preferred a regulation that allowed hitchhiking except where prohibited. The primary concern of the NPS in developing this regulation is public safety. Hitchhiking can be a very hazardous activity, exposing the hitchhiker to dangers from motor vehicles and motor vehicle occupants and exposing motor vehicle occupants to dangers from other motor vehicles and from hitchhikers. However, a strict prohibition of hitchhiking would not alter the fact that, in many park areas, a certain number of visitors depend on hitchhiking as a means of traveling to, from and within the park and would continue to engage in the activity regardless of the prohibition. Recognizing this fact, the NPS supports a regulation that generally prohibits hitchhiking but that provides the superintendent the discretion to designate areas where and establish conditions under which hitchhiking may take place and be managed to reduce the levels of hazards involved.

This section is published unchanged.

#### Organizational Summary

The NPS has prepared the following organizational summary to assist in the review and analysis of the revisions to 36 CFR Part 4 that are reflected in this rulemaking.

Old section	New section
4.1 State law applicable.....	4.2.
4.3 Bicycles.....	4.30.
4.4 Commercial towing service.....	4.4.
4.5 Driver's license.....	Deleted in favor of State law.
4.6 Driving under the influence.....	4.23.
4.7 Entrances and exits.....	Deleted.
4.8 Excessive acceleration.....	4.22.
4.9 False report.....	Deleted in favor of 36 CFR 2.32.
4.10 Following vehicles.....	Deleted in favor of State law.
4.11 Load, weight, length and width limitations.....	4.11.
4.12 Mufflers.....	Deleted in favor of State law.
4.13 Obstructing traffic.....	4.13.
4.14 Reckless or careless driving.....	4.22 and State law.

Old section	New section
4.15 Report of motor vehicle accident.....	4.4.
4.16 Right-of-way.....	4.20.
4.17 Speed limits.....	4.21.
4.18 Traffic control and signs.....	4.12.
4.19 Travel on roads and designated routes.....	4.10.
4.20 Vehicle registration.....	Deleted in favor of State law.
4.21 Brakes.....	Deleted in favor of State law.
4.22 Hitchhiking.....	4.31.
NEW REGULATIONS	
4.1 Applicability and scope.....	
4.3 Authorized emergency vehicles.....	
4.14 Open container of alcoholic beverage.....	(Deleted from 36 CFR 2.35 and revised).

#### Section-by-Section Analysis

The following terms used in the regulatory text of this rulemaking are defined in 36 CFR 1.4 and have specific meanings: authorized person, bicycle, carry, developed area, legislative jurisdiction, motor vehicle, operator, pack animal, park area, park road, permit, person, possession, State, superintendent, traffic, vehicle, and wildlife.

These terms are used throughout the NPS regulations codified in 36 CFR Parts 1, 2, 3, 4, 7, and 13 in order to facilitate consistent interpretation, understanding and enforcement. The definitions of the terms "authorized person", "operator" and "superintendent" are particularly important to a reader's clear understanding of the provisions of this rulemaking. "Authorized person" means "an employee or agent of the National Park Service with delegated authority to enforce the provisions of this chapter", i.e. a NPS law enforcement officer. "Operator", as revised in this rulemaking, means "a person who operates, drives, controls, otherwise has charge of or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment". "Superintendent" means "the official in charge of a park area or an authorized representative thereof".

This rulemaking also incorporates the use of discretionary authority provided park superintendents in 36 CFR 1.5. That section authorizes a superintendent, after having met certain decision criteria, to establish public use limits, impose closures, designate areas for a specific use or activity or impose conditions or restrictions on a use or activity. These management tools provide the flexibility necessary for a superintendent to react to changing situations in the field without having to resort to a lengthy rulemaking process each time closures or restrictions are imposed, changed or relaxed. Whenever the text of a section of this rulemaking

contains the terms "designate" or "designated", or authorizes the superintendent to "establish conditions or restrictions", the NPS intends that language to constitute authorization for a superintendent to exercise the discretionary authority provided in § 1.5. When exercising the authority of § 1.5, a superintendent is required to comply with public notice procedures specified in 36 CFR 1.7. The use of this discretionary authority is discussed further under the headings of the individual sections in Part 4 in which it is included.

Although the primary focus of this rulemaking is Part 4, other Parts of 36 CFR are affected as well. The following outlines the purpose and intent of each section of this rulemaking and provides applicable background information.

#### Part 1

##### Section 1.2(e) Applicability and scope.

A paragraph has been added to this section, which pertains to the general applicability and scope of all the regulations codified in 36 CFR, clarifying the fact that NPS regulations are not intended to restrict the activities of a mobility-impaired person using a manual or motorized wheelchair, beyond the degree that the activities of pedestrians are restricted by the same regulations. The purposes of this provision are to eliminate potential confusion and to emphasize the NPS intent that a manual wheelchair or motorized wheelchair, as defined in 36 CFR 1.4, not be considered a bicycle or motor vehicle within the context of NPS regulations.

##### Section 1.4 Definitions.

The list of definitions in section § 1.4 is amended as follows. The definition of "authorized emergency vehicle" is revised to restrict the types of vehicles that qualify for this designation to a vehicle in official use for emergency purposes by a Federal agency or an emergency vehicle as defined by applicable State law. The NPS considers the former definition too broad and not clearly delineating the few types of vehicles that are appropriately classified as emergency vehicles. This defined term is subsequently used in § 4.3 of this rulemaking.

The definitions of "bicycle" and "motor vehicle" have been revised to specifically exclude a manual or motorized wheelchair.

The definition of "operator" has been revised to clarify the NPS intent that this term also include the person in actual physical control of a mechanical mode of



transportation or any other mechanical equipment.

Definitions of the terms "manual wheelchair" and "motorized wheelchair" have been developed to clarify which types of devices used by a mobility-impaired person qualify for exemption from restrictions that otherwise apply to bicycles and motor vehicles. The term "motorized wheelchair" encompasses only devices that are designed solely for and used by a mobility-impaired person for locomotion and that are capable of and suitable for use in indoor pedestrian areas. Accordingly, a small, motorized, three or four-wheel vehicle designed for outdoor recreational purposes would not qualify as a motorized wheelchair, even if used by a mobility-impaired person.

A comprehensive definition of "State law" has been added to clarify the many references made to this term in Part 4 as well as in other parts of 36 CFR. As it applies to the regulations in Part 4, the definition is intended to encompass the full spectrum of State and local provisions that apply to traffic, including provisions of State vehicle codes that have been decriminalized by the respective States. However, in the case of a park area located within the exterior boundaries of an Indian Reservation, this definition does not include Tribal Law.

A definition of "traffic control device" has also been added to this section. This definition is intended to cover the various types and purposes of signs and other markings used for the purpose of regulating traffic. By policy, NPS traffic control devices generally must comply with the Manual on Uniform Traffic Control Devices, the document that establishes national standards for traffic signs and markings, as supplemented by the NPS Sign Manual. The term is used in §§ 4.3, 4.12 and 4.21 of this rulemaking.

#### Section 1.8 Information collection.

This section has been revised to list the permit requirements contained in § 4.11, but otherwise remains unchanged.

#### Part 2

#### Section 2.18 Snowmobiles.

The NPS addresses the use of snowmobiles separately from traffic regulations. However, the close connection between snowmobile activities and certain aspects of traffic control are reflected in the fact that this section lists eight regulations in Part 4 that are made applicable to snowmobile operations. These references have been revised to reflect the deletions and

renumbering of the sections in Part 4 resulting from this rulemaking. In addition, in response to requests from affected field area staffs, the NPS has added §§ 4.14 (Open Container) and 4.21 (Speed Limits) to the list of sections that apply to snowmobile operations in order to address public safety problems related to excessive speed and the consumption of alcoholic beverages by individuals while operating oversnow machines.

#### Section 2.33 Report of injury or damage.

This section has been revised to clarify the relationship of the reporting requirements imposed by this section to those imposed by §§ 3.4 and 4.4 and to raise the threshold for reporting incidents involving property damage unrelated to boating or motor vehicle accidents from \$100 to \$300. The NPS intends that incidents such as confrontations with wildlife, tree failures, vandalism, etc., resulting in personal injury or significant property damage be reported so that the NPS can provide assistance to visitors and to provide documentation necessary to improve park safety programs. However, the superintendent retains the discretion to investigate and document incidents of lesser severity if requested by visitors or if otherwise determined to be in the interest of public safety.

#### Section 2.35 Alcoholic beverages and controlled substances.

This general regulation pertains to the use of alcoholic beverages and controlled substances in park areas. However, paragraphs (a)(2)(iii) and (iv) of this section addressed carrying or storing an opened container of an alcoholic beverage within a motor vehicle on a park road or parking area, provisions that are more appropriately codified in Part 4. Section 2.35 has been revised to delete those two paragraphs. Additional discussion is found under the listing for § 4.14.

This rulemaking also revises paragraph (a)(3) of § 2.35, substituting the general terms "public use area or public facility" for the extensive list of specific types of sites within a park area that a park superintendent may close to the consumption of alcoholic beverages. This rulemaking also authorizes the superintendent to close the same types of areas to the possession of an open container of an alcoholic beverage as well, since in an area closed to the consumption of alcoholic beverages there is no legitimate reason to possess an open container. An exception is included that allows for the storage of

an open container in a motor vehicle in accordance with the provisions of § 4.14.

However, both of these closure authorities are subject to the prerequisite conditions specified in § 2.35. A closure may only be imposed if based upon one of two determinations: (1) that the consumption of an alcoholic beverage or the possession of an open container of an alcoholic beverage would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or (2) incidents of aberrant behavior related to the consumption of alcoholic beverages are of such magnitude that the diligent application of the authority to establish public use limits and the enforcement of disorderly conduct regulations over a reasonable period of time have failed to alleviate the problem.

These limited closure authorities are site-specific and less than parkwide in scope. Parkwide closures to the consumption of alcoholic beverages or the possession of an open container may not be implemented locally under the authority of §§ 2.35 or 1.5. The NPS has determined that such expanded closures require a separate rulemaking to ensure the opportunity for full public notice and comment as required by 36 CFR 1.5(b) and the Administrative Procedures Act.

#### Part 4

The regulations in 36 CFR Part 4 are codified by general category in order to provide a logical system of organization and to facilitate their use and understanding by NPS employees and interested members of the public. These categories are: administrative provisions (§§ 4.1 through 4.4), general traffic provisions (§§ 4.10 through 4.14), moving violations (§§ 4.20 through 4.23) and non-motor vehicle provisions (§§ 4.30 and 4.31). Numerical gaps exist to allow for future changes and additions to each category.

#### Section 4.1 Applicability and scope.

This section was added as a result of a comment received in response to the proposed rule; its text differs from that of similar provisions in 36 CFR Parts 1 and 2 to provide a clearer indication of NPS intent. It provides that the regulations in Part 4 apply as specified in 36 CFR 1.2 and also apply on all roadways and parking areas within a park area that are open to the public and that are under the legislative jurisdiction of the United States, regardless of ownership. The NPS has added this provision in the interest of protecting the property rights of private, commercial and State landowners



within park areas and to assure that essential public safety services are available in those areas. However, these regulations do not apply on all non-federal lands, but apply *only* on roadways and parking areas, *only* on those over which the State has ceded either exclusive or concurrent legislative jurisdiction to the NPS and *only* on those that are open to the public.

This section has been added in an effort to provide services to non-federal landowners within park areas and to State agencies having responsibility for public safety on State highways located within park areas. A number of park areas contain private roads over which the State has no jurisdiction and/or State roads that are isolated from the closest State agency representatives responsible for providing law enforcement coverage. However, the NPS emphasizes that responsibility for public safety on State highways remains with the respective State agencies. The NPS intends that the enforcement of these regulations on non-NPS roadways take place only in emergency situations or in cases when State and local authorities are unable to provide the necessary enforcement action or response.

#### Section 4.2 State law applicable.

This section, which applies regardless of the type of jurisdiction exercised by the NPS, adopts State vehicle codes as the basis for the regulation and control of traffic in park areas. The NPS is adopting, as if they were a part of the regulations in Part 4, all the applicable and nonconflicting vehicle and traffic laws of the State and local political subdivision(s) within whose exterior boundaries a park area or a portion thereof is located. The NPS regulations in Part 4 supercede any State vehicle code provisions that might conflict with or duplicate these sections and must be applied by NPS law enforcement personnel in lieu of State law.

The Secretary of the Interior's primary authority for promulgating regulations that pertain to the National Park System is 16 U.S.C. 3. Section 4.2 and all other regulations in Part 4 are considered necessary for the use and management of park areas and are promulgated under this authority. The same statute also establishes the penalty for violating a regulation promulgated under that authority. Under section 4.2, applicable and nonconflicting elements of State law are adopted and applied to units of the National Park System as if they were regulations promulgated by the Secretary of the Interior, therefore making violations subject to the penalty provision of 16 U.S.C. 3.

The NPS wishes to emphasize the fact that, although substantive provisions of State law are adopted, administrative or penalty provisions of State law are not. A person convicted in Federal court of a violation of State law under § 4.2 would be subject only to the penalty provisions in 36 CFR 1.3, regardless of whether State law provides for a greater or less severe penalty, a mandatory penalty or only a minor administrative penalty such as remedial training. However, imposition of specific penalties remains a matter of judicial discretion.

Furthermore, since drivers license suspensions and revocations are administrative procedures exercised by State agencies, the NPS has no authority or mechanism to apply such procedures to a conviction of a violation of State law under § 4.2 or a violation of any other section of Part 4 except through the cooperation of the appropriate State agency. The penalty provisions codified in 36 CFR 1.3 are established by statute and can be revised only through legislation.

#### Section 4.3 Authorized emergency vehicles.

This section allows operators of Federal, State, local or private emergency vehicles qualified exemptions from compliance with certain traffic regulations under certain emergency circumstances. These provisions apply only to an operator of a vehicle that meets the definition of "authorized emergency vehicle" as defined in § 1.4. Although this section is intended to facilitate prompt response in emergency situations and to provide operators a certain degree of protection from liability under those circumstances, it does not relieve them from the duty to drive safely. More specific guidance on the operation and equipping of emergency vehicles is found in agency guidelines and State law.

#### Section 4.4 Report of motor vehicle accident.

This section includes only those motor vehicle accident reporting requirements that pertain directly to the NPS and that are necessary for park area staffs to carry out their public safety responsibilities. These requirements are the only ones retained from the former §§ 4.15 and 4.4.

Paragraph (a) requires the operator of a vehicle that has been involved in an accident resulting in property damage, personal injury or death to report the accident to the superintendent as soon as practicable, but no later than 24 hours after the accident. A new provision has been added to this section that makes a vehicle occupant responsible for

reporting an accident if the operator is physically incapable of doing so. Paragraph (b) prohibits moving a vehicle involved in an accident without first notifying the superintendent, unless the vehicle constitutes a hazard or prior notification is not practicable.

The requirements for notification of the superintendent are imposed so that park staffs can provide emergency assistance promptly and initiate and complete accident investigations in a timely manner. However, the requirement to report a minor motor vehicle accident to the superintendent does not automatically translate into the need for a detailed investigation and report of that accident. The requirement to report all motor vehicle accidents, regardless of severity, is made in the interest of identifying and correcting traffic safety hazards and engineering problems and to assure that appropriate information is exchanged between the operators involved.

The reporting requirements that States impose to assure protection of the public interest and State agency notification are reflected in State law and are not affected by this section. A motor vehicle operator and occupants remain responsible for satisfying applicable State reporting requirements; these can also be enforced in park areas under 36 CFR 4.2.

#### Section 4.10 Travel on park roads and designated routes.

This section retains most of the basic provisions codified in the former § 4.19, edited for clarity. Its purpose is to establish broad and consistent Servicewide standards for the operation of motor vehicles in the interest of protecting park resources and facilities. These particular limitations are not typically found in State vehicle codes. This section prohibits the operation of motor vehicles in park areas except on park roads, in parking areas and on routes and areas designated for off-road vehicle (ORV) use.

Paragraph (c) of this section addresses three issues related to the impacts of motor vehicle use on park visitors, resources and facilities. The first prohibits operation of a motor vehicle not equipped with pneumatic tires, except for limited authorized use of track-laying vehicles. The second prohibits causing unreasonable damage to the surface of roads or routes. The NPS intends the term unreasonable damage to mean damage to a degree beyond that which would ordinarily be expected under conditions existing at the time. The third provision of this paragraph imposes minimum visibility



requirements for motor vehicles used on ORV routes at night.

This rulemaking does not revise the existing conditions under which off-road motor vehicle activities may be conducted in park areas. These activities are governed by Federal statutory law and the provisions of Executive Orders 11644 and 11989 which apply to all Federal agencies. These Executive Orders require that ORV activities on public lands be limited to designated routes or areas and that these designations be based on the protection of resources, the promotion of visitor safety and the minimization of user conflicts. Furthermore, routes and areas may be designated in units of the National Park System only if the agency head determines that ORV use in such locations will not adversely affect their natural, aesthetic or scenic values. This section requires that ORV routes and areas in park areas be designated by special regulation and limits these designations to national recreation areas, national seashores, national lakeshores and national preserves.

The operation of a motor vehicle on park roads is governed by the regulations in 36 CFR Part 4 and by State law. Any vehicle that may be operated legally on a State highway may be operated legally on a park road unless otherwise restricted by the superintendent. The operation of a motor vehicle on a designated ORV route or area is governed by the provisions of this section, special regulations developed by individual superintendents in 36 CFR Part 7, and conditions and restrictions established by superintendents pursuant to 36 CFR 1.5. ORV use in park areas in Alaska is also governed by regulations codified in 36 CFR Part 13.

#### *Section 4.11 Load, weight and size limits.*

This section is a revision and clarification of the former section with the same number. Paragraph (a) provides that limits established by State law are used as the standard in each park area, but authorizes the superintendent to designate more restrictive limits and require a permit for a motor vehicle that exceeds an established limit. This discretionary authority is essential in order for a superintendent to impose restrictions, based on local conditions, for public safety purposes or for the protection of park resources or the road surface itself. Paragraph (b) contains the specific prohibitions of this section and paragraph (c) authorizes the superintendent to suspend or revoke the

permit of a person who has violated one of its terms or conditions.

This rulemaking also provides for increasing to 10 inches the size of auxiliary side mirrors that are allowed under certain conditions and deletes the provision of the former section that pertained to transportation of explosives.

#### *Section 4.12 Traffic control devices.*

This section is a revision of the former section 4.18. The superintendent's authorities to erect signs and control public use are outlined in 36 CFR 1.5 and 1.7. This section serves as a basic requirement for a motor vehicle operator to comply with a traffic control device (as defined in § 1.4), a requirement that is essential to assuring the safety of park visitors and the protection of resources.

#### *Section 4.13 Obstructing traffic.*

This section is a revision of the former section of the same number, the text having been clarified and simplified. This section is intended to address the typical situations found in park areas where vehicle operators are often faced with narrow roads, steep grades, slow moving traffic and distractions caused by wildlife, points of interest or scenic vistas. State vehicle codes do not address these situations in a consistent manner.

Paragraph (a) prohibits stopping or parking a vehicle upon a park road (as defined in § 1.4) except as authorized by the superintendent or as a result of a condition beyond the control of the operator. The primary purpose of this provision is to provide for public safety by preventing obstructions and traffic congestion on the main-traveled surface of roadways. The exception provided allows the superintendent the discretion and flexibility, without the need for posting signs, to allow parking or stopping that, under conditions that exist at the time, does not pose a hazard to other traffic.

Paragraph (b) is intended to prevent hazards, mechanical problems, overheating and unsafe actions by vehicle operators that often occur as a result of situations when vehicle operators proceed at a speed well below the posted limit and that which is safe and, in doing so, impede the progress of operators of vehicles to the rear.

#### *Section 4.14 Open container of alcoholic beverage.*

This section addresses the carrying and storing of an open container containing an alcoholic beverage within a motor vehicle. These provisions were formerly codified in 36 CFR 2.35 but,

since they pertain directly to motor vehicles and traffic safety, have been moved to Part 4. This section prohibits the carrying or storing of an open container of an alcoholic beverage in a motor vehicle within a park area except for specified areas within a motor vehicle that are not immediately accessible to the vehicle's operator or occupants. The NPS intends these provisions to apply to both moving and parked motor vehicles, except as specified in paragraph (c). The primary purpose of this section is to prevent public safety hazards created by individuals drinking and driving by physically separating vehicle operators and occupants from alcoholic beverages located in the vehicle.

Paragraph (a) specifies that each vehicle occupant is responsible for complying with the provisions of this section that pertain to the carrying of an open container and specifically makes the vehicle operator responsible for complying with the open container storage provisions. Paragraph (b) contains a detailed description of what constitutes an open container of an alcoholic beverage and contains the basic prohibitory elements of the regulation.

Paragraph (c) contains three exceptions to the prohibitions listed in paragraph (b). The first allows the storage of an open container in the trunk of a motor vehicle or, if the motor vehicle is not equipped with a trunk, in some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers. The unoccupied bed of a pickup truck or hatchback area of an automobile are examples of areas that fall under this exception. The second exception applies to an open container stored in the living quarters of a motor home or camper. The final exception allows the carrying or storing of an open container in a motor vehicle parked at an authorized campsite where the motor vehicle's occupants are camped unless such action is otherwise prohibited (as would be the case in an area closed to the consumption of alcoholic beverages or the possession of an open container under 36 CFR 2.35 or in the case of a minor in possession of alcohol). This provision describes the only situation when carrying an open container within a motor vehicle is considered by the NPS to be appropriate, i.e. when that vehicle is parked at a campsite and being used more as an extension of the campsite than as a means of transportation.



Paragraph (d) clarifies the text used in paragraph (c), emphasizing that a utility or glove compartment is considered an area readily accessible to the operator and passengers of a motor vehicle and therefore not suitable for storage of an open container. The extended cab of a pickup truck is also in that category.

#### *Section 4.20 Right-of-way.*

This revision retains the basic provisions of the former § 4.16 that address the protection of pedestrians, saddle and pack animals and vehicles drawn by animals. These elements, which are typical traffic safety concerns in park areas, are not addressed consistently by State law. This section does not limit the superintendent's authority to establish restrictions and closures that serve to limit the use of park roads by pedestrians, stock or vehicles drawn by animals. However, in locations where their use of park roads is allowed in conjunction with motor vehicle traffic, this section specifies that a motor vehicle operator must yield the right of way. The issue of yielding right of way to emergency vehicles is addressed by State law.

#### *Section 4.21 Speed Limits.*

This section contains the basic provisions of the former § 4.17. Paragraph (a) lists the basic speed limits that are established for park areas in order to encourage Servicewide consistency and limit confusion on the part of park visitors. Paragraph (b) provides the superintendent discretionary authority to alter those limits in the interest of public safety and requires speed limits to be posted by using standard traffic control devices. Paragraph (c) contains the prohibitory text.

Paragraph (d) contains authorization for the use of radar and specifies that applicable signing is not required. These provisions are included to resolve questions and potential conflicts in some park areas arising from provisions of State law. However, the NPS intends that NPS law enforcement personnel who operate radar as part of traffic safety programs be certified according to applicable Federal, State or industry standards.

#### *Section 4.22 Unsafe Operation.*

This section is a significant revision of the former § 4.14 which combined elements related to reckless driving and careless driving. Paragraph (a) emphasizes that reckless driving is not addressed by this regulation; reckless driving is defined by State law and will be enforced by adopting applicable State law under 36 CFR 4.2.

Paragraph (b) prohibits a number of careless driving actions, less severe than reckless driving, that are not addressed consistently by State law but that occur frequently in park areas and are public safety concerns. The first prohibits operating a motor vehicle without due care or at a speed greater than that which is reasonable and prudent considering existing conditions. A motor vehicle operator is responsible for considering all of the listed factors when making decisions related to vehicle operation. The second prohibits the unnecessary squealing or skidding of tires. The third prohibits failure to maintain control of a motor vehicle to the extent necessary to avoid danger to persons, property or wildlife.

The final prohibited actions focus on the vehicle operator but are intended to enhance passenger safety. The first prohibits operating a motor vehicle while allowing a person to ride on or within any vehicle or trailer or other mode of conveyance while being towed, unless the towed vehicle is specifically designed for carrying passengers while being towed. A tram is an example of the type of vehicle that qualifies as an exception. The second provision prohibits allowing a passenger to ride on an exterior portion of a motor vehicle that is not designed or intended for the use of a passenger. The latter restriction does not apply to a person seated on the floor of a truck bed equipped with sides unless that also is prohibited by State law.

#### *Section 4.23 Operating under the influence of alcohol or drugs.*

This section represents a major revision of the former § 4.6 and is based on a model regulation developed by the Department of Transportation, tailored to fit NPS needs. This section prohibits operating a motor vehicle while under the influence of alcohol or drugs or a combination of both, includes a specific blood alcohol concentration limit, allows a great deal of flexibility in the use of state or federal training and equipment standards, includes a provision requiring an alleged violator to submit to quantitative blood-alcohol tests and leaves the choice of tests to the officer or ranger rather than the alleged violator. Key terms used in this section that are defined in section 1.4 include "authorized person" and "operator".

Paragraph (a) of this regulation addresses two individual offenses. The first is a standard prohibition against operating or being in actual physical control of a motor vehicle while under the influence of alcohol or drugs to a degree that renders the operator

incapable of safe operation. The elements necessary to prove a violation of this provision can be demonstrated through descriptions of observations made by the arresting officer and witnesses, physical evidence and the results of field tests conducted by the officer at the scene. The results of chemical or other quantitative tests conducted may be used to supplement the other items of evidence. The second offense involves operating a vehicle while the alcohol concentration in the operator's blood is 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath. These specific concentrations and units of measure are taken from the Uniform Vehicle Code. Equivalent units of measure are by definition equal and may obviously be substituted. However, in order to eliminate unnecessary conflicts with State law in cases where State law provides for more restrictive alcohol concentrations than the Uniform Vehicle Code, the NPS has included a provision in this paragraph adopting the more restrictive State levels. Therefore, if State law establishes an alcohol concentration of 0.08 grams or more of alcohol per 100 milliliters of blood as the threshold for a determination of operating under the influence, that level applies within park areas located in that State rather than the 0.10 limit specified in this paragraph. But if State law establishes a less restrictive alcohol concentration such as 0.12 grams or more of alcohol per 100 milliliters of blood, then the 0.10 limit specified in this paragraph applies within park areas located in that State.

The elements necessary to prove a violation of paragraph (a)(2) can be shown only through the results of chemical or other quantitative tests; the officer's probable cause for believing that the person is operating a motor vehicle while under the influence must be comprised of other factors. In cases where the specified alcohol concentrations cannot be shown, an operator can only be charged with a violation of paragraph (a)(1).

Paragraph (b) provides that the prohibitions in paragraph (a) also apply to an operator who is legally entitled to use alcohol or another drug. Therefore, the fact that a person charged with a violation of paragraph (a) is legally entitled to use alcohol or another drug for medical reasons does not constitute authorization to operate a motor vehicle while under the influence of those substances.

Paragraph (c) pertains to quantitative testing for the purpose of determining an



operator's blood alcohol or drug content. Regardless of the medium being tested, the results of quantitative tests measure the concentration of the drug in the operator's blood. Paragraph (c)(1) requires an operator, when requested by an authorized person who has probable cause to believe that the operator has violated a provision of paragraph (a), to submit to one or more tests of body fluids or breath to determine blood alcohol or drug content. Paragraph (c)(2) provides that refusal by an operator to submit to a test under the conditions specified in paragraph (c)(1) is prohibited and constitutes a separate violation, subjecting the operator to the penalty provisions of 36 CFR 1.3. Proof of a violation of paragraph (c)(2) is not dependent upon a prior finding of the operator's guilt on a charge of violating a provision of paragraph (a).

Paragraphs (c)(1) and (2) are essential to the success of NPS public safety and alcohol enforcement programs because of the inability of the NPS to adopt State implied consent statutes which provide for the administrative revocation of the operator's drivers license when he or she refuses to take a quantitative test. The NPS wishes to emphasize, however, that a vehicle operator is not required to submit to a qualitative test (field sobriety test) and that there is no penalty attached to a refusal to take such a test.

Paragraph (c)(3) establishes that the choice of quantitative tests to be taken by an operator rests with the authorized person, not with the operator. This provision is necessary because park staffs are often limited in the types of testing equipment and facilities and the number of certified testers available. The isolation of many park areas and the distance to alternative testing equipment or facilities preclude giving the choice of tests to the operator. This provision also favors the operator, the person who benefits most from a situation that provides for prompt access to testing equipment and facilities.

Paragraph (c)(4) limits the conducting of quantitative tests to accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use. The NPS intent is to assure that equipment and methods used for such tests are of a type or nature commonly used by Federal, State and local law enforcement agencies and accepted as reliable for such purposes by Federal, State or local courts. The NPS also intends that tests be conducted by personnel who have been certified in the use of that equipment by the

manufacturer or by an appropriate Federal, State or local official or agency.

Paragraph (d) addresses the issue of presumptions. If the results of quantitative tests indicate that the alcohol concentration in the operator's blood is less than the alcohol concentrations specified in paragraph (a)(2), there can be no presumption drawn concerning whether or not the operator is under the influence. However, this absence of presumption is not intended to preclude the introduction of other evidence, such as the elements comprising the officer's probable cause to arrest the operator, that addresses the question of whether the operator was, at the time of the alleged violation, under the influence of alcohol or drugs.

#### *Section 4.30 Bicycles.*

This section is a revision of the former section 4.3 and provides that the use of bicycles is allowed in park areas under the same basic conditions as are motor vehicles, i.e. on park roads, in parking areas and on routes designated for their use. These provisions reflect the facts that the NPS generally considers bicycle use a very appropriate, low impact method for visitors to enjoy park areas, but that certain limitations on their use are necessary and appropriate in the interest of public safety, resource protection and the avoidance of visitor conflicts.

Paragraph (a) authorizes the use of bicycles within park areas on roads, in parking areas and on routes designated by the superintendent for bicycle use but reinforces the fact that the superintendent may impose closures pursuant to 36 CFR 1.5. The superintendent may also establish conditions and restrictions on bicycle use under the same authority. The NPS intends that the discretionary authority provided superintendents to designate bicycle routes without a formal rulemaking be a flexible tool used to accommodate the needs of bicyclists for reasonable access to areas away from park roads. This process provides the opportunity for a superintendent, after making the required written determination that such use is consistent with the protection of park values and purposes and safety considerations, to designate routes (trails) for bicycle use only and/or for the common use of bicyclists and other visitors as appropriate, given local conditions. However, this discretionary authority to designate bicycle routes without a formal rulemaking may be exercised only for routes located in developed areas or special use zones of park areas, which are land management

and use categories established pursuant to a park area's Statement for Management and General Management Plan.

Developed areas include lands within development and historic zones; these areas are generally impacted to a certain degree by structures, facilities or other improvements which reflect the fact that the primary purpose or management objective for the use of these lands is other than the preservation of their natural resources. Special use zones include non-federal lands within the exterior boundaries of a park area that are used for non-park purposes but over which the NPS exerts some degree of administrative control. Ranch, forest, industrial, or agricultural lands and transportation or utility corridors are all examples of land uses that could occur within special use zones and where recreational activities such as bicycling could be compatible.

Paragraph (b) requires a formal rulemaking in order for a bicycle route to be designated outside of a developed area or special use zone. The NPS has determined that the designation of a bicycle route outside of such developed areas, in areas whose primary purpose and land uses are related more to the preservation of natural resources and values, would have a much greater potential to result in adverse resource impacts or visitor use conflicts. This paragraph therefore provides for a much more stringent decisionmaking process for such a proposal by requiring a formal rulemaking. Such a process will provide for a thorough review of all environmental and visitor use considerations and assure the superintendent of having had the benefit of public review and comment before making a decision on any proposed designation.

Paragraph (c) establishes operator responsibilities by making applicable to a bicycle operator all the provisions of Part 4 that apply to a motor vehicle operator except §§ 4.4, 4.10, 4.11 and 4.14. Bicycle accidents are reported pursuant to the provisions of 36 CFR 2.33; §§ 4.10 and 4.11 do not apply to bicycle use; § 4.14 has very little applicability beyond the primary area of concern addressed in paragraph (d)(4) of this section and discussed below.

Most activities involving the operation of a bicycle are regulated under paragraph (c) by applying other sections of Part 4. However, paragraph (d) addresses four additional areas involving bicycle use. The first prohibits the possession of a bicycle in a designated wilderness area. This provision reflects a statutory prohibition



on forms of mechanical transport in wilderness areas that is contained in the Wilderness Act of 1964 [16 U.S.C. 1133(c)] and that has been in effect since that law was passed. This rulemaking establishes a regulatory provision (and an accompanying penalty) that is consistent with regulations promulgated by the United States Forest Service and the Bureau of Land Management, Federal land management agencies which administer extensive areas of public lands designated as wilderness.

The second provision of paragraph (d) imposes certain minimum visibility requirements on bicycle operators in the interest of their own safety. The third prohibits bicycle operators from riding abreast of one another except where authorized by the superintendent. This provision is also intended to enhance the safety of bicycle operators and to prevent obstruction of traffic.

The last provision of this paragraph prohibits consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage while operating a bicycle. The NPS has determined that, because of the limited storage options available to a bicycle operator, it is unreasonable to expect a bicycle operator to comply with the requirements for carrying and storing an open container of an alcoholic beverage specified in § 4.14. This paragraph allows an operator to carry or store, for later consumption, an open container of an alcoholic beverage in a backpack or in a cooler or storage bag attached to the bicycle, but prohibits the unsafe practice of consuming an alcoholic beverage while operating the bicycle.

#### Section 4.31 Hitchhiking.

This section is a revision of the former § 4.22 which prohibits hitchhiking altogether. This regulation reflects the NPS concern over the public safety issues involved with hitchhiking but also recognizes that, under certain circumstances and in certain locations, hitchhiking is the only practical method for some pedestrians to circulate within park areas. This section prohibits hitchhiking but provides the superintendent the discretion to allow hitchhiking through designations and under conditions established in the interest of public safety pursuant to the authority of § 1.5. This position recognizes the dangers inherent in hitchhiking and establishes a Servicewide standard that discourages the activity. But it also allows hitchhiking to take place on a limited basis under conditions that can reduce somewhat the types and levels of hazards to which participants are exposed. Based on local circumstances,

a superintendent can allow hitchhiking in designated locations and under specific conditions that would reduce the public safety hazards involved in this activity.

#### Part 7

As a result of the revisions to 36 CFR Parts 1, 2 and 4 contained in this rulemaking, the NPS is deleting 22 regulations (park-specific) in 36 CFR Part 7 that pertain to motor vehicles and traffic safety. These regulations have been rendered unnecessary by the terms of this rulemaking either through duplication or by the fact that the restrictions can be imposed through use of the superintendent's discretionary authority. The subjects addressed by the regulations being deleted include load, weight and size limitations, limitations on vehicle types, speed limits and hitchhiking. A number of special regulations have also been revised to change or delete cross-references to regulations in Part 4.

#### Part 34

Minor revisions to the regulations in this Part were required to change cross-references to regulations in Parts 1 and 4.

#### Drafting Information

The workgroup that developed this rulemaking is composed of Paul Anderson (Delaware Water Gap National Recreation Area—Yosemite National Park), Pat Buccello (Sequoia National Park), Jim Fox (Blue Ridge Parkway), Bob Mihan (Yellowstone National Park), Pete Nigh (Grand Canyon National Park), Bob Reid, (U.S. Park Police), Andy Ringgold (Branch of Ranger Activities), Steve Shackleton (Hawaii Volcanoes National Park) and John Sharp (Office of the Solicitor). Numerous other NPS employees also contributed to its development and review.

#### Paperwork Reduction Act

The information collection requirements contained in § 4.11 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0026.

#### Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*). These findings are

based on the fact that the overall economic effects of this rulemaking are negligible; they impose no additional costs on any group or class of individuals.

The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

#### List of Subjects

##### 36 CFR Part 1

National parks, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

##### 36 CFR Part 2

Environmental protection, National parks, Reporting and recordkeeping requirements.

##### 36 CFR Part 4

National parks, Traffic regulations.

##### 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

##### 36 CFR Part 34

National parks, Administrative site, Penalties, Traffic regulations.

In consideration of the foregoing, 36 CFR Chapter 1 is amended as follows:

#### PART 1—GENERAL PROVISIONS

1. The authority citation for Part 1 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 460/-6a(e), 462(k); D.C. Code 8-137 (1981) and D.C. Code 40-721 (1981).

2. By adding a new paragraph (e) to § 1.2 to read as follows:

#### § 1.2 Applicability and scope.

\* \* \* \* \*



(e) The regulations in this chapter are intended to treat a mobility-impaired person using a manual or motorized wheelchair as a pedestrian, and are not intended to restrict the activities of such a person beyond the degree that the activities of a pedestrian are restricted by the same regulations.

#### § 1.4 [Amended]

3. By amending the list of definitions in § 1.4 as follows:

a. By revising the definition of "Authorized emergency vehicle" to read as follows:

"Authorized emergency vehicle" means a vehicle in official use for emergency purposes by a Federal agency or an emergency vehicle as defined by State law.

b. By revising the definition of "Bicycle" to read as follows:

"Bicycle" means every device propelled solely by human power upon which a person or persons may ride on land, having one, two, or more wheels, except a manual wheelchair.

c. By revising the definition of "Motor vehicle" to read as follows:

"Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power, but not operated on rails or upon water, except a snowmobile and a motorized wheelchair.

d. By revising the definition of "Operator" to read as follows:

"Operator" means a person who operates, drives, controls, otherwise has charge of or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment.

e. By adding the following definitions and inserting them in alphabetical order:

"Manual wheelchair" means a device that is propelled by human power, designed for and used by a mobility-impaired person.

"Motorized wheelchair" means a self-propelled wheeled device, designed solely for and used by a mobility-impaired person for locomotion, that is both capable of and suitable for use in indoor pedestrian areas.

"State law" means the applicable and nonconflicting laws, statutes, regulations, ordinances, infractions and codes of the State(s) and political subdivision(s) within whose exterior boundaries a park area or a portion thereof is located.

"Traffic control device" means a sign, signal, marking or other device placed or erected by, or with the concurrence of, the Superintendent for the purpose of regulating, warning, guiding or otherwise controlling traffic or regulating the parking of vehicles.

4. By revising § 1.8 to read as follows:

#### § 1.8 Information collection.

The information collection requirements contained in §§ 1.5, 2.4, 2.5, 2.10, 2.12, 2.17, 2.33, 2.38, 2.50, 2.51, 2.52, 2.60, 2.61, 2.62, 3.3, 3.4, 4.4 and 4.11 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024-0026. This information is being collected to provide superintendents data necessary to issue permits for special uses of park areas and to obtain notification of accidents that occur within park areas. This information will be used to grant administrative benefits and to facilitate prompt emergency response to accidents. In §§ 2.33, 3.4 and 4.4, the obligation to respond is mandatory; in all other sections the obligation to respond is required in order to obtain a benefit.

### PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

5. The authority citation for Part 2 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

6. By revising paragraphs (a) and (d)(4) of § 2.18 to read as follows. The introductory text of paragraph (d) is republished.

#### § 2.18 Snowmobiles.

(a) Notwithstanding the definition of vehicle set forth in § 1.4 of this chapter, the provisions of §§ 4.4, 4.12, 4.13, 4.14, 4.20, 4.21, 4.22 and 4.23 of this chapter apply to the operation of a snowmobile.

(d) The following are prohibited: \* \* \*

(4) Racing, or operating a snowmobile in excess of 45 mph, unless restricted in accordance with § 4.22 of this chapter or otherwise designated.

7. By revising paragraph (a) of § 2.33 to read as follows:

#### § 2.33 Report of injury or damage.

(a) A person involved in an incident resulting in personal injury or property damage exceeding \$300, other than an accident reportable under §§ 3.4 or 4.4 of this chapter, shall report the incident to the superintendent as soon as possible. This notification does not satisfy reporting requirements imposed by applicable State law.

8. By amending § 2.35 as follows:

a. By removing paragraphs (a)(2) (iii) and (iv).

b. By revising paragraph (a)(3) to read as follows:

#### § 2.35 Alcoholic beverages and controlled substances.

(a) \* \* \*

(3)(i) The superintendent may close all or a portion of a public use area or public facility within a park area to the consumption of alcoholic beverages and/or to the possession of a bottle, can or other receptacle containing an alcoholic beverage that is open, or that has been opened, or whose seal is broken or the contents of which have been partially removed. *Provided however*, that such a closure may only be implemented following a determination made by the superintendent that:

(A) The consumption of an alcoholic beverage or the possession of an open container of an alcoholic beverage would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or

(B) Incidents of aberrant behavior related to the consumption of alcoholic beverages are of such magnitude that the diligent application of the authorities in this section and §§ 1.5 and 2.34 of this chapter, over a reasonable time period, does not alleviate the problem.

(ii) A closure imposed by the superintendent does not apply to an open container of an alcoholic beverage that is stored in compliance with the provisions of § 4.14 of this chapter.

(iii) Violating a closure imposed pursuant to this section is prohibited.

9. By revising Part 4 to read as follows:

### PART 4—VEHICLES AND TRAFFIC SAFETY

Sec.

4.1 Applicability and scope.

4.2 State law applicable.

4.3 Authorized emergency vehicles.

4.4 Report of motor vehicle accident.

4.10 Travel on park roads and designated routes.

4.11 Load, weight and size limits.

4.12 Traffic control devices.

4.13 Obstructing traffic.

4.14 Open container of alcoholic beverage.

4.20 Right of way.

4.21 Speed limits.

4.22 Unsafe operation.

4.23 Operating under the influence of alcohol or drugs.

4.30 Bicycles.

4.31 Hitchhiking.

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

#### § 4.1 Applicability and scope.

The applicability of the regulations in this part is described in § 1.2 of this chapter. The regulations in this part also apply, regardless of land ownership, on



all roadways and parking areas within a park area that are open to public traffic and that are under the legislative jurisdiction of the United States.

#### § 4.2 State law applicable.

(a) Unless specifically addressed by regulations in this chapter, traffic and the use of vehicles within a park area are governed by State law. State law that is now or may later be in effect is adopted and made a part of the regulations in this part.

(b) Violating a provision of State law is prohibited.

#### § 4.3 Authorized emergency vehicles.

(a) The operator of an authorized emergency vehicle, when responding to an emergency or when pursuing or apprehending an actual or suspected violator of the law, may:

- (1) Disregard traffic control devices;
- (2) Exceed the speed limit; and
- (3) Obstruct traffic.

(b) The provisions of paragraph (a) of this section do not relieve the operator from the duty to operate with due regard for the safety of persons and property.

#### § 4.4 Report of motor vehicle accident.

(a) The operator of a motor vehicle involved in an accident resulting in property damage, personal injury or death shall report the accident to the superintendent as soon as practicable, but within 24 hours of the accident. If the operator is physically incapable of reporting the accident, an occupant of the vehicle shall report the accident to the superintendent.

(b) A person shall not tow or move a vehicle that has been involved in an accident without first notifying the superintendent unless the position of the vehicle constitutes a hazard or prior notification is not practicable, in which case notification shall be made before the vehicle is removed from the park area.

(c) Failure to comply with a reporting requirement specified in paragraph (a) or (b) of this section is prohibited.

(d) The notification requirements imposed by this section do not relieve the operator and occupants of a motor vehicle involved in an accident of the responsibility to satisfy reporting requirements imposed by State law.

#### § 4.10 Travel on park roads and designated routes.

(a) Operating a motor vehicle is prohibited except on park roads, in parking areas and on routes and areas designated for off-road motor vehicle use.

(b) Routes and areas designated for off-road motor vehicle use shall be promulgated as special regulations. The

designation of routes and areas shall comply with § 1.5 of this chapter and E.O. 11644 (37 FR 2887). Routes and areas may be designated only in national recreation areas, national seashores, national lakeshores and national preserves.

(c) The following are prohibited:

(1) Operating a motor vehicle not equipped with pneumatic tires, except that a track-laying motor vehicle or a motor vehicle equipped with a similar traction device may be operated on a route designated for these vehicles by the superintendent.

(2) Operating a motor vehicle in a manner that causes unreasonable damage to the surface of a park road or route.

(3) Operating a motor vehicle on a route or area designated for off-road motor vehicle use, from ½ hour after sunset to ½ hour before sunrise, without activated headlights and taillights that meet the requirements of State law for operation on a State highway.

#### § 4.11 Load, weight and size limits.

(a) Vehicle load, weight and size limits established by State law apply to a vehicle operated on a park road. However, the superintendent may designate more restrictive limits when appropriate for traffic safety or protection of the road surface. The superintendent may require a permit and establish conditions for the operation of a vehicle exceeding designated limits.

(b) The following are prohibited:

(1) Operating a vehicle that exceeds a load, weight or size limit designated by the superintendent.

(2) Failing to obtain a permit when required.

(3) Violating a term or condition of a permit.

(4) Operating a motor vehicle with an auxiliary detachable side mirror that extends more than 10 inches beyond the side fender line except when the motor vehicle is towing a second vehicle.

(c) Violating a term or condition of a permit may also result in the suspension or revocation of the permit by the superintendent.

#### § 4.12 Traffic control devices.

Failure to comply with the directions of a traffic control device is prohibited unless otherwise directed by the superintendent.

#### § 4.13 Obstructing traffic.

The following are prohibited:

(a) Stopping or parking a vehicle upon a park road, except as authorized by the superintendent, or in the event of an

accident or other condition beyond the control of the operator.

(b) Operating a vehicle so slowly as to interfere with the normal flow of traffic.

#### § 4.14 Open container of alcoholic beverage.

(a) Each person within a motor vehicle is responsible for complying with the provisions of this section that pertain to carrying an open container. The operator of a motor vehicle is the person responsible for complying with the provisions of this section that pertain to the storage of an open container.

(b) Carrying or storing a bottle, can or other receptacle containing an alcoholic beverage that is open, or has been opened, or whose seal is broken or the contents of which have been partially removed, within a motor vehicle in a park area is prohibited.

(c) This section does not apply to:

(1) An open container stored in the trunk of a motor vehicle or, if a motor vehicle is not equipped with a trunk, to an open container stored in some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers; or

(2) An open container stored in the living quarters of a motor home or camper; or

(3) Unless otherwise prohibited, an open container carried or stored in a motor vehicle parked at an authorized campsite where the motor vehicle's occupant(s) are camping.

(d) For the purpose of paragraph (c)(1) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a motor vehicle.

#### § 4.20 Right of way.

An operator of a motor vehicle shall yield the right of way to pedestrians, saddle and pack animals and vehicles drawn by animals. Failure to yield the right of way is prohibited.

#### § 4.21 Speed limits.

(a) Park area speed limits are as follows:

(1) 15 miles per hour: within all school zones, campgrounds, picnic areas, parking areas, utility areas, business or residential areas, other places of public assemblage and at emergency scenes.

(2) 25 miles per hour: upon sections of park road under repair or construction.

(3) 45 miles per hour: upon all other park roads.

(b) The superintendent may designate a different speed limit upon any park road when a speed limit set forth in



paragraph (a) of this section is determined to be unreasonable, unsafe or inconsistent with the purposes for which the park area was established. Speed limits shall be posted by using standard traffic control devices.

(c) Operating a vehicle at a speed in excess of the speed limit is prohibited.

(d) An authorized person may utilize radiomicrowaves or other electrical devices to determine the speed of a vehicle on a park road. Signs indicating that vehicle speed is determined by the use of radiomicrowaves or other electrical devices are not required.

#### § 4.22 Unsafe operation.

(a) The elements of this section constitute offenses that are less serious than reckless driving. The offense of reckless driving is defined by State law and violations are prosecuted pursuant to the provisions of section 4.2 of this chapter.

(b) The following are prohibited:

(1) Operating a motor vehicle without due care or at a speed greater than that which is reasonable and prudent considering wildlife, traffic, weather, road and light conditions and road character.

(2) Operating a motor vehicle in a manner which unnecessarily causes its tires to squeal, skid or break free of the road surface.

(3) Failing to maintain that degree of control of a motor vehicle necessary to avoid danger to persons, property or wildlife.

(4) Operating a motor vehicle while allowing a person to ride:

(i) On or within any vehicle, trailer or other mode of conveyance towed behind the motor vehicle unless specifically designed for carrying passengers while being towed; or

(ii) On any exterior portion of the motor vehicle not designed or intended for the use of a passenger. This restriction does not apply to a person seated on the floor of a truck bed equipped with sides, unless prohibited by State law.

#### § 4.23 Operating under the influence of alcohol or drugs.

(a) Operating or being in actual physical control of a motor vehicle is prohibited while:

(1) Under the influence of alcohol, or a drug, or drugs, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(2) The alcohol concentration in the operator's blood or breath is 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath. *Provided* however, that if State law that applies to

operating a motor vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this paragraph.

(b) The provisions of paragraph (a) of this section also apply to an operator who is or has been legally entitled to use alcohol or another drug.

(c) *Tests.* (1) At the request or direction of an authorized person who has probable cause to believe that an operator of a motor vehicle within a park area has violated a provision of paragraph (a) of this section, the operator shall submit to one or more tests of the blood, breath, saliva or urine for the purpose of determining blood alcohol and drug content.

(2) Refusal by an operator to submit to a test is prohibited and proof of refusal may be admissible in any related judicial proceeding.

(3) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized person.

(4) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(d) *Presumptive levels.* (1) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a)(1) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (a)(2) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(2) The provisions of paragraph (d)(1) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

#### § 4.30 Bicycles.

(a) The use of a bicycle is prohibited except on park roads, in parking areas and on routes designated for bicycle use; *provided, however*, the superintendent may close any park road or parking area to bicycle use pursuant to the criteria and procedures of §§ 1.5 and 1.7 of this chapter. Routes may only be designated for bicycle use based on a written determination that such use is consistent with the protection of a park area's natural, scenic and aesthetic

values, safety considerations and management objectives and will not disturb wildlife or park resources.

(b) Except for routes designated in developed areas and special use zones, routes designated for bicycle use shall be promulgated as special regulations.

(c) A person operating a bicycle is subject to all sections of this part that apply to an operator of a motor vehicle, except §§ 4.4, 4.10, 4.11 and 4.14.

(d) The following are prohibited:

(1) Possessing a bicycle in a wilderness area established by Federal statute.

(2) Operating a bicycle during periods of low visibility, or while traveling through a tunnel, or between sunset and sunrise, without exhibiting on the operator or bicycle a white light or reflector that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

(3) Operating a bicycle abreast of another bicycle except where authorized by the superintendent.

(4) Operating a bicycle while consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage.

#### § 4.31 Hitchhiking.

Hitchhiking or soliciting transportation is prohibited except in designated areas and under conditions established by the superintendent.

### PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

10. The authority citation for Part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 462(k); section 7.96 also issued under D.C. Code 8-137 (1981) and D.C. Code 40-721 (1981).

11. The authority citations following all the sections in Part 7 are removed.

#### § 7.3 [Amended]

12. In § 7.3, Glacier National Park, by removing paragraph (g) and redesignating paragraph (h) as paragraph (g).

#### § 7.4 [Amended]

13. In § 7.4, Grand Canyon National Park, by removing paragraphs (a), (b), (c), (d), (e), and (f) and redesignating paragraph (g) as (a), paragraph (h) as (b) and paragraph (i) as paragraph (c).

#### § 7.7 [Amended]

14. In § 7.7, Rocky Mountain National Park, paragraph (h)(3) is amended by revising the cross-reference to "§ 4.14" to read "§ 4.22".



**§ 7.12 [Amended]**

15. In § 7.12, Gulf Islands National Seashore, paragraph (b)(1)(i) is amended by revising the cross-reference to "§ 4.19(b)" to read "§ 4.10(b)" and paragraph (b)(2)(v)(B) is amended by removing the cross-references to "§§ 4.12, 4.19(e), 4.20 and 4.21" and adding in place thereof a cross-reference to read "§ 4.10(c)(3)".

**§ 7.13 [Amended]**

16. In § 7.13, Yellowstone National Park, by removing paragraph (a), redesignating paragraph (b)(2) as paragraph (a), removing paragraph (b)(1), and redesignating the introductory text of paragraph (b)(3) and paragraphs (b)(3)(i) and (b)(3)(ii) as the introductory text of paragraph (b) and paragraphs (b)(1) and (b)(2).

**§ 7.15 [Amended]**

17. In § 7.15, Shenandoah National Park, by removing paragraphs (e) and (f).

**§ 7.16 [Amended]**

18. In § 7.16, Yosemite National Park, by removing and reserving paragraphs (d), (f) and (g).

**§ 7.20 [Amended]**

19. In § 7.20, Fire Island National Seashore, by amending paragraph (a)(7)(iv) by removing the cross-references to "§§ 4.12, 4.19(e), 4.20 and 4.21" and adding in place thereof a cross-reference to read "§ 4.10(c)(3)".

**§ 7.29 [Amended]**

20. In § 7.29, Gateway National Recreation Area, by amending paragraph (a) by revising the cross-reference to "§ 4.19(b)" to read "§ 4.10(b)".

**§ 7.34 [Amended]**

21. In § 7.34, Blue Ridge Parkway, by removing paragraph (k) and redesignating paragraph (l) as (k).

**§ 7.41 [Amended]**

22. In § 7.41, Big Bend National Park, by removing paragraph (d).

**§ 7.43 [Amended]**

23. In § 7.43, Natchez Trace Parkway, by removing paragraphs (c)(5) (iii) and (iv) and redesignating paragraph (c)(5)(v) as paragraph (c)(5)(iii).

**§ 7.57 [Amended]**

24. In § 7.57, Lake Meredith Recreation Area, by removing paragraph (a)(2), by removing only the paragraph designation (1), not the text, of paragraph (a)(1) and revising paragraph (b) to read as follows:

(b) *Safety Helmets.* The operator and each passenger of a motorcycle shall wear a safety helmet while riding on a motorcycle in an off-road area designated in paragraph (a) of this section.

**§ 7.58 [Amended]**

25. In § 7.58, Cape Hatteras National Seashore, by removing paragraph (b) and redesignating paragraph (c) as (b).

**§ 7.65 [Amended]**

26. In § 7.65, Assateague Island National Seashore, by amending paragraph (b)(2)(ii)(C) by removing the cross-references to "§§ 4.12, 4.19 and 4.21" and adding in place thereof a cross-reference to read "§ 4.10".

**§ 7.75 [Amended]**

27. In § 7.75, Padre Island National Seashore, by removing paragraphs

(a)(1)(iii) and (a)(2)(v), by redesignating paragraphs (a)(1) (iv), (v) and (vi) as paragraphs (a)(1) (iii), (iv) and (v), and by amending paragraph (a)(1)(ii) by removing the cross-references to "§§ 4.12, 4.19, and 4.21" and adding in place thereof a cross-reference to § 4.10.

## **PART 34—EL PORTAL ADMINISTRATIVE SITE REGULATIONS**

28. The authority citation for Part 34 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 47-1, 4601-6a(e).

29. By revising paragraphs (a)(1) and (d) of § 34.5 to read as follows:

**§ 34.5 Applicable regulations.**

\* \* \* \* \*

(a) *General provisions.* (1) 1.2(d) Applicability and scope; exception for administrative activities.

\* \* \* \* \*

(d) *Vehicles and traffic safety.* (1) 4.2 State law applicable.

(2) 4.4 Report of motor vehicle accident.

(3) 4.10(a), (c)(1) and (c)(2) Travel on park roads and designated routes.

(4) 4.11 Load, weight and size limits.

(5) 4.12 Traffic control devices.

(6) 4.14 Open container of alcoholic beverage.

(7) 4.21 Speed limits.

(8) 4.22 Unsafe operation.

(9) 4.23 Operating under the influence of alcohol or drugs.

\* \* \* \* \*

Dated: March 5, 1987.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-6391 Filed 4-1-87; 8:45 am]

BILLING CODE 4310-70-M



# Environmental Protection Federal Register

Thursday  
April 2, 1987

## Part III

## Environmental Protection Agency

40 CFR Part 761

Polychlorinated Biphenyls Spill Cleanup  
Policy; Final Rule



# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 761

[OPTS 62051; FRL 3179-1]

### Polychlorinated Biphenyls Spill Cleanup Policy

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** TSCA PCB spill cleanup policy rule.

**SUMMARY:** This rule presents the Toxic Substances Control Act (TSCA) policy for the cleanup of spilled polychlorinated biphenyls (PCBs). The TSCA policy establishes the measures which EPA considers to be adequate cleanup for the majority of situations where PCB contamination occurs during activities regulated under TSCA. While cleanup in accordance with this policy constitutes adequate cleanup of spills within the scope of this policy and creates a presumption against enforcement for penalties or further cleanup, EPA will not exercise enforcement abeyance for a disposal violation if the spill was the result of gross negligence or knowing violation.

Since this rule is a policy statement, it does not require notice and comment under the provisions of the Administrative Procedures Act. However, the Agency welcomes comment on and additional relevant information about the TSCA policy.

**DATE:** The TSCA policy shall be effective on May 4, 1987.

**ADDRESSES:** Information or comments for consideration by the Agency should be submitted in triplicate to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. G004 NE Mall, 401 M St., SW., Washington, DC 20460.

Information and comments should include the docket number OPTS-62051. Information and comments received in connection with this document will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. G004 NE Mall, Environmental Protection Agency, 401 M St., SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

## SUPPLEMENTARY INFORMATION:

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### I. Background

EPA regulations controlling the disposal of PCBs, promulgated in the *Federal Register* of February 17, 1978 (43 FR 7150) and May 31, 1979 (44 FR 31514), broadly define the term "disposal" to encompass accidental as well as intentional releases of PCBs to the environment. Under these regulations, EPA considers intentional, as well as unintentional, spills, leaks and other uncontrolled discharges of PCBs at concentrations of 50 parts per million (ppm) or greater (defined by the concentration of PCBs in the material which spills) to be improper disposal of PCBs. For purposes of this discussion, and as defined in this policy under Unit III, the term "Spill" means spills, leaks, or other uncontrolled discharges of PCBs where the release results in any quantity of PCBs running off or about to run off the surface of the equipment or other PCB source, as well as the contamination resulting from those releases. When PCBs are improperly disposed of as a result of a spill of material containing 50 ppm or greater PCBs, EPA has the authority under section 17 of TSCA to compel persons to take actions to rectify damage or clean up contamination resulting from the spill.

Policies for the cleanup of PCB spills are currently established separately by each EPA regional office, and owners of

spilled PCBs are required to meet these standards or face potential penalties under TSCA section 16 for improper disposal of PCBs. Once cleanup occurs to the standard set by the EPA regional offices, the material which has been cleaned, e.g., soil, metal, or equipment, may be processed, distributed in commerce and used (unless the regional office has placed restrictions on these other activities).

EPA standards for the cleanup of spilled PCBs have been established at the EPA regional office level since 1978. Each region sets PCB cleanup standards in the form of general guidelines and then applies the general guidelines on a case-by-case basis for specific spill situations. The general guidelines and their application to spills have differed among regions. For certain spill situations, regions have required cleanup to 50 ppm PCBs. In other spill situations, regions have required cleanup to preexisting background levels or the limit of detection of PCBs.

For PCB spill cleanup, EPA has already in place certain requirements for timely cleanup. In the final PCB Electrical Equipment Rule, published in the *Federal Register* of August 25, 1982 (47 FR 37342), EPA requires the initiation of PCB Transformer spill cleanup within 48 hours of spill discovery and defines disposal specifically to include leaks, spills, and other unintentional discharges of PCBs. However, the PCB Electrical Equipment Rule did not establish numerical criteria for PCB spill cleanup.

Most recently, the regions have applied the "lowest practicable level" guideline set up in the January 27, 1984, Administrative Law Judge decision on *General Electric v. U.S.E.P.A.* The Agency has, however, experienced several areas of difficulty in applying the "lowest practicable level" approach. First, the guideline is subject to, and has resulted in, disparate interpretations. Second, the term "lowest practicable level" cannot be easily applied by the regulated community without guidance from EPA. This can delay cleanup, and delays in cleanup can result in prolonged exposures to humans and more widespread environmental contamination. Finally, the owner of the PCBs may disagree with the EPA regional office's interpretation of the "lowest practicable level" standard. This may occur when the EPA regional office interpretation would require more stringent and costly measures than the owner believes are warranted. This too can delay complete cleanup, as the application of this guideline has, in fact, led to protracted Agency actions in some cases.



Although EPA did not finalize the proposed PCB spill cleanup policy in 1982, EPA has continued to evaluate available information on the risks posed by spilled PCBs and the costs associated with cleanup to various levels. EPA recognized that setting a nationwide TSCA PCB cleanup policy was a desirable goal and in the winter of 1984 EPA produced a draft TSCA Compliance Monitoring Program Policy covering PCB spill cleanup. Although the 1984 draft policy was never officially released, the members of the press and the public acquired and reviewed the draft policy. The Environmental Defense Fund (EDF), Natural Resources Defense Council (NRDC), Edison Electric Institute (EEI), Chemical Manufacturers Association (CMA), and National Electrical Manufacturers Association (NEMA), among others, were principal reviewers of the 1984 draft policy.

On May 17, 1985 EDF, NRDC, EEI, CMA, and NEMA submitted to EPA an alternative PCB spill cleanup policy for consideration by the Agency. EPA viewed the Consensus Agreement as a framework for completing its nationwide TSCA policy and evaluated the Consensus Agreement as a source of information in developing the Agency's own policy. The Agency and the Consensus Group shared two general principles about the appropriate framework for a nationwide PCB spills cleanup policy: That the policy should establish requirements designed to be effective in the large majority of spill situations; and that the risks posed by residual contamination (PCBs remaining after cleanup) vary depending upon the location of the spill and the potential for human exposures.

The requirements and standards in this policy are based upon the Agency's evaluation of the potential routes of exposure and potential risks associated with the more common types of PCB spills, as well as the costs associated with cleanup following these more common types of spills. Typical PCB spills involve the limited release of PCBs during the course of EPA-authorized activities such as: The use of electrical equipment (e.g., transformers and capacitors), the servicing of electrical equipment, and the storage for disposal of PCBs.

In establishing this cleanup policy for typical PCB spills, EPA recognizes that the risks posed by spills of PCBs vary, depending upon spill location and the amount of PCBs spilled. EPA recognized this earlier, in both the August 25, 1982 PCB Electrical Equipment Rule and the July 17, 1985 PCB Transformer Fires Rule. In these rules, EPA placed more

stringent requirements on higher concentration PCBs located in areas where their release would pose greatest potential for significant human exposure.

This TSCA policy requires cleanup of PCBs to different levels depending upon spill location, the potential for exposure to residual PCBs remaining after cleanup, the concentration of the PCBs initially spilled (i.e., PCBs spilled from PCB-contaminated equipment versus PCBs spilled from PCB equipment), and the nature and size of the population potentially at risk of exposure. Thus, this policy applies the most stringent requirements for PCB spill cleanup to areas where there is the greater potential for human exposures to spilled PCBs. The policy applies less stringent requirements for cleanup to PCB spills in areas where the type and degree of contact present lower potential exposures. Finally, even less stringent requirements apply to areas where there is little potential for any direct human exposures.

EPA firmly believes that by providing uniform, predictable requirements across the regions for the majority of spill situations, the nationwide policy will reduce the risks posed by spills of PCBs by encouraging rapid and effective cleanup and restoration of the site.

Unit VII of this document discusses available information and the rationale for the policy based upon that information. The policy reflects the Agency's best judgment in light of available information. However, the Agency welcomes comment on, and additional relevant information about, the TSCA policy as the Agency intends to continue to consider comments and evaluate information on the issue of PCB spills cleanup. Should the Agency's evaluation show that new information, or practical considerations associated with the implementation of the policy, warrant changes in, or modifications to, the policy, the policy will be revised accordingly by EPA headquarters. Thus, a public docket has been established to collect comments and information. The Agency believes that much of the data currently lacking can be developed only over a period of time and experience in implementing the policy. Therefore, EPA has not placed a time limit on the submission of comments.

Finally, the Agency intends to re-examine in 12 to 18 months the need to promulgate regulations requiring cleanup in accordance with Agency standards. The Agency's decision on the need to promulgate regulations will be based on two primary considerations. First, EPA will consider whether the

issuance of the policy has in fact resulted in the application of consistent nationwide standards to PCB spill cleanup. Second, EPA will consider its experience in enforcing provisions of this policy with particular emphasis on the results of any litigation brought by the Agency for improper PCB disposal from leaks or spills.

## II. Scope of the Policy

This policy establishes requirements for the cleanup of spills resulting from the release of materials containing PCBs at concentrations of 50 ppm or greater. The policy applies to spills which occur after the effective date of this policy.

Existing spills (spills which occurred prior to the effective date of this policy) are excluded from the scope of this policy for two reasons: (1) For old spills which have already been discovered, this policy is not intended to require additional cleanup where a party has already cleaned a spill in accordance with requirements imposed by EPA through its regional offices, nor is this policy intended to interfere with ongoing litigation of enforcement actions which bring into issue PCB spills cleanup; and (2) EPA recognizes that old spills which are discovered after the effective date of this policy will require site-by-site evaluation because of the likelihood that the site involves more pervasive PCB contamination than fresh spills and because old spills are generally more difficult to clean up than fresh spills (particularly on porous surfaces such as concrete). Therefore, spills which occurred before the effective date of this policy are to be decontaminated to requirements established at the discretion of EPA, usually through its regional offices.

EPA expects the large majority of PCB spills subject to the TSCA PCB regulations to conform to the typical spill situations considered in developing this policy. However, this policy does exclude from application of the final numerical cleanup standards certain spill situations: Spills directly into surface water, drinking water, sewers, grazing lands, and vegetable gardens. While these spills are subject to the notification requirements and to measures designed to minimize further environmental contamination (see Unit IV.A.), final cleanup standards for these types of spills are to be established at the discretion of the EPA regional offices.

For all other spills, EPA generally expects the final decontamination standards of this policy to apply. Occasionally, some small percentage of spills covered by this policy may



warrant different or more stringent cleanup requirements because of additional routes of exposure or significantly greater exposures than those assumed in developing the final cleanup standards of this policy.

There may also be exceptional spill situations that require less stringent cleanup, or a different approach to cleanup, due to factors associated with the particular spill. These factors may mitigate expected exposures and risks or make cleanup to these requirements impracticable.

#### A. Excluded Spills

Although the following six spill situations are excluded from the automatic application of final numerical decontamination standards of Units IV.B and C, the general requirements under Unit IV.A do apply to these spills. In addition, all of these excluded situations require practicable, immediate actions to contain the area of contamination. While these situations may not always require more stringent cleanup measures, the Agency is excluding these situations because they will always involve significant factors that may not be adequately addressed by cleanup standards based upon typical spill characteristics.

For the following six spill situations, the responsible party shall decontaminate the spill in accordance with site-specific requirements established by the EPA regional offices:

1. Spills that result in the direct contamination of surface waters (surface waters include, but are not limited to, "waters of the United States" as defined in 40 CFR Part 122, ponds, lagoons, wetlands, and storage reservoirs).
2. Spills that result in the direct contamination of sewers or sewage treatment systems.
3. Spills that result in the direct contamination of any private or public drinking water sources or distribution systems.
4. Spills which migrate to and contaminate surface waters, sewers, or drinking water supplies before cleanup has been completed in accordance with this policy.
5. Spills that contaminate animal grazing lands.
6. Spills that contaminate vegetable gardens.

#### B. Spill Situations Within the Scope of the Policy That May Warrant More Stringent Cleanup Levels

For spills within the scope of this policy, EPA generally retains the authority to require additional cleanup upon finding that, despite good faith

efforts by the responsible party, the numerical decontamination levels in the policy have not been met (see discussion in Unit VI). In addition, EPA foresees the possibility of exceptional spill situations in which site-specific risk factors may warrant additional cleanup to more stringent numerical decontamination levels than are required by the policy. In these situations, the Regional Administrator has the authority to require additional cleanup upon finding, based upon the specific facts of the spill, that further cleanup must occur to prevent unreasonable risk. Before making a final decision on additional cleanup, the Regional Administrator will notify the Director of the Office of Toxic Substances of his finding and the basis for the finding.

For example, site-specific characteristics such as short depth to ground water, type of soil, or the presence of a shallow well may pose exceptionally high potential for ground water contamination by PCBs remaining after cleanup to the standards specified in this policy. Spills that pose such a high degree of potential for ground water contamination have not been excluded from the policy under Unit II.A.1 because the presence of such potential may not be readily apparent. EPA feels that automatically excluding such spills from the scope of the policy could result in the delay of cleanup—a particularly undesirable outcome if potential ground water contamination is in fact a significant concern.

#### C. EPA Flexibility To Allow Less Stringent or Alternative Requirements

EPA retains the flexibility to allow less stringent or alternative decontamination measures based upon site-specific considerations. EPA will exercise this flexibility if the responsible party demonstrates that cleanup to the numerical decontamination levels is clearly unwarranted because of risk-mitigating factors, that compliance with the procedural requirements or numerical standards in the policy is impracticable at a particular site, or that site-specific characteristics make the costs of cleanup prohibitive.

The Regional Administrator will notify the Director of OTS of any decision (and the basis for that decision) to all less stringent cleanup. The purpose of this notification is to enable the Director of OTS to ensure consistency in standards for spill cleanup under special circumstances across the regions.

#### D. The Relationship of This Policy to Other Statutes

This policy does not affect cleanup standards or requirements for the reporting of spills imposed, or to be imposed, under other Federal Statutory authorities, including but not limited to, the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA). Where more than one requirement applies, the stricter standard must be met.

The Agency recognizes that the existence of this policy will inevitably result in attempts to apply the standards to situations within the scope of other statutory authorities. However, other statutes require the Agency to consider different or alternative factors in determining appropriate corrective actions. In addition, the types and magnitudes or exposures associated with sites requiring corrective action under other statutes often involve important differences from those expected of the typical, electrical equipment-type spills considered in developing this policy. Thus, cleanups under other statutes, such as RCRA corrective actions or remedial and emergency response actions under SARA, may result in different outcomes.

#### III. Definitions

For purposes of this policy, certain words and phrases are used to denote specific materials, procedures, or circumstances. The following definitions are provided for purposes of clarity and are not to be taken as exhaustive lists of situations and materials covered by the policy.

1. **PCBs.** The term means polychlorinated biphenyls as defined in 40 CFR 761.3. As specified in 40 CFR 761.1(b), no requirements may be avoided through dilution of the PCB concentration.
2. **Low-concentration PCBs.** The term means PCBs that are tested and found to contain less than 500 ppm PCBs, or those PCB-containing materials which EPA requires to be assumed to be at concentrations below 500 ppm (i.e., untested mineral oil dielectric fluid).
3. **High-concentration PCBs.** The term means PCBs that contain 500 ppm or greater PCBs, or those materials which EPA requires to be assumed to contain 500 ppm or greater PCBs in the absence of testing.
4. **Spill.** The term as used in this policy means both intentional and



unintentional spills, leaks, and other uncontrolled discharges where the release results in any quantity of PCBs running off or about to run off the external surface of the equipment or other PCB source, as well as the contamination resulting from those releases. This policy applies to spills of 50 ppm or greater PCBs. The concentration of PCBs spilled is determined by the PCB concentration in the material spilled as opposed to the concentration of PCBs in the material onto which the PCBs were spilled. Where a spill of untested mineral oil occurs, the oil is presumed to contain greater than 50 ppm, but less than 500 ppm PCBs, and is subject to the relevant requirements of this policy.

**5. Residential/commercial areas.** Residential/commercial areas are those areas where people live or reside, or where people work in other than manufacturing or farming industries. Residential areas include housing and the property on which housing is located, as well as playgrounds, roadways, sidewalks, parks and other similar areas within a residential community. Commercial areas are typically accessible to both members of the general public and employees and include public assembly properties, institutional properties, stores, office buildings, and transportation centers.

**6. Outdoor electrical substations.** Outdoor electrical substations are outdoor, fenced-off, and restricted access areas used in the transmission and/or distribution of electrical power. Outdoor electrical substations restrict public access by being fenced or walled off as defined at 40 CFR 761.30(1)(1)(ii). For purposes of this TSCA Policy, outdoor electrical substations are defined as being located at least 0.1 kilometer (km) from a residential/commercial area. Outdoor fenced-off and restricted access areas used in the transmission and/or distribution of electrical power which are located less than 0.1 km from a residential/commercial area are considered to be residential/commercial areas.

**7. Other restricted access (nonsubstation) locations.** Other restricted access (nonsubstation) locations are areas other than electrical substations that are at least 0.1 km from a residential/commercial area and limited by man-made barriers (e.g., fences and walls) or substantially limited by naturally occurring barriers such as mountains, cliffs, or rough terrain. These areas generally include industrial facilities and extremely remote rural locations. (Areas where access is restricted but are less than 0.1

km from a residential/commercial area are considered to be residential/commercial areas.)

**8. Nonrestricted access areas.** A nonrestricted access area is any area other than restricted access, outdoor electrical substations, and other restricted access locations, as defined in paragraphs 5 and 6 of this unit. In addition to residential/commercial areas, these areas include unrestricted access rural areas (areas of low-density development and population where access is uncontrolled by either man-made barriers or naturally occurring barriers, such as rough terrain, mountains, or cliffs).

**9. High-contact residential/commercial surface.** A high-contact residential/commercial surface is a surface in a residential/commercial area which is repeatedly touched, often for relatively long periods of time. Doors, wall areas below 6 feet in height, uncovered flooring, windowsills, fencing, banisters, stairs, automobiles, and children's play areas, such as outdoor patios and sidewalks, are examples of high-contact residential/commercial surfaces. Examples of low-contact residential/commercial surfaces include interior ceilings, interior wall areas above 6 feet in height, roofs, asphalt roadways, concrete roadways, wooden utility poles, unmanned machinery, concrete pads beneath electrical equipment, curbing, exterior structural building components (e.g., aluminum/vinyl siding, cinder block, asphalt tiles), and pipes.

**10. High-contact industrial surface.** A high-contact industrial surface is a surface in an industrial setting which is repeatedly touched, often for relatively long periods of time. Manned machinery and control panels are examples of high-contact industrial surfaces. High-contact industrial surfaces are generally of impervious solid material. Examples of low-contact industrial surfaces include ceilings, walls, floors, roofs, roadways and sidewalks in the industrial area, utility poles, unmanned machinery, concrete pads beneath electrical equipment, curbing, exterior structural building components, indoor vaults, and pipes.

**11. Soil.** The term means all vegetation, soils and other ground media, including but not limited to sand, grass, gravel, and oyster shells. It does not include concrete and asphalt.

**12. Impervious solid surfaces.** The term means solid surfaces which are nonporous and thus unlikely to absorb spilled PCBs within the short period of time required for cleanup of spills under this policy. Impervious solid surfaces

include, but are not limited to, metals, glass, aluminum siding, and enameled or laminated surfaces.

**13. Nonimpervious solid surfaces.** The term means solid surfaces which are porous and are more likely to absorb spilled PCBs prior to completion of the cleanup requirements prescribed in this policy. Nonimpervious solid surfaces include, but are not limited to, wood, concrete, asphalt, and plasterboard.

**14. Double wash/rinse.** The double wash/rinse procedural performance standard applied in this policy means a minimum requirement to cleanse solid surfaces (both impervious and non-impervious) two times with an appropriate solvent or other material in which PCBs are at least 5 percent soluble (by weight). A volume of PCB-free fluid sufficient to cover the contaminated surface completely must be used in each wash/rinse. The wash/rinse requirement does not mean the mere spreading of solvent or other fluid over the surface, nor does the requirement mean a once-over wipe with a soaked cloth. Precautions must be taken to contain any runoff resulting from the cleansing and to dispose properly of wastes generated during the cleansing.

**15. Standard wipe test.** For spills of high concentration PCBs on solid surfaces, this policy requires cleanup to numerical surface standards and sampling by a standard wipe test to verify that the numerical standards have been met. This definition constitutes the minimum requirements for an appropriate wipe testing protocol. A standard-size template (10 centimeters (cm) X 10 cm) will be used to delineate the area of cleanup; the wiping medium will be a gauze pad or glass wool of known size which has been saturated with hexane. It is important that the wipe be performed very quickly after the hexane is exposed to air. EPA strongly recommends that the gauze (or glass wool) be prepared with hexane in the laboratory and that the wiping medium be stored in sealed glass vials until it is used for the wipe test. Further, EPA requires the collection and testing of field blanks and replicates.

**16. Requirements and standards.** The term "requirements," as used in this policy means both the procedural responses and numerical decontamination levels set forth in this policy as constituting adequate cleanup of PCBs. The term "standards" means the numerical decontamination levels set forth in this policy.

**17. Spill area.** The term means the area of soil on which visible traces of the spill can be observed plus a buffer



zone of 1 foot beyond the visible traces. Any surface or object (e.g., concrete sidewalk or automobile) within the visible traces area, or on which visible traces of the spilled material are observed, is included in the spill area. This area represents the minimum area assumed to be contaminated by PCBs in the absence of precleanup sampling data and is thus the minimum area which must be cleaned.

18. *Spill boundaries.* The term means the actual area of contamination as determined by postcleanup verification sampling, or by precleanup sampling to determine actual spill boundaries. EPA can require additional cleanup when necessary to decontaminate all areas within the spill boundaries to the levels required in this policy (e.g., additional cleanup will be required if postcleanup sampling indicates that the area decontaminated by the responsible party, such as the spill area as defined in paragraph 13 of this unit, did not encompass the actual boundaries of PCB contamination).

#### IV Requirements for PCB Spill Cleanup

##### A. General Requirements

Unless expressly limited, the reporting, disposal, and precleanup sampling requirements in this unit apply to all spills of PCBs at concentrations of 50 ppm or greater which are subject to decontamination requirements under TSCA, including those spills listed in Unit II.A.1 through 6 which are excluded from the final cleanup standards in Units IV. B and C.

1. *Reporting requirements.* The following reporting is required in addition to applicable reporting requirements under the CWA or CERCLA. For example, under the National Contingency Plan all spills involving 10 lbs or more of PCB material must currently be reported to the National Response Center (1-800-424-8802). The requirements below are designed to be consistent with existing reporting requirements to the extent possible so as to minimize reporting burdens on the governments as well as the regulated community.

a. Where a spill directly contaminates surface water, sewers, or drinking water supplies (see discussion under Unit II.A), the responsible party shall notify the appropriate EPA regional office (the Office of Pesticides and Toxic Substances Branch) and obtain guidance for appropriate cleanup measures in the shortest possible time after discovery, but in no case later than 24 hours after discovery.

b. Where a spill directly contaminates grazing lands or vegetable gardens (see

discussion under Unit II.A), the responsible party shall notify the appropriate EPA regional office (the Office of Pesticides and Toxic Substances Branch) and proceed with the immediate requirements specified in Unit IV.B or C, depending of the source of the spill, in the shortest possible time after discovery, but in no case later than 24 hours after discovery.

c. Where a spill exceeds 10 pounds of PCB material (generally 1 gallon of PCB dielectric fluid) and is not addressed in paragraph 1.a. or b. of this unit, the responsible party will notify the appropriate EPA regional office and proceed to decontaminate the spill area in accordance with this TSCA policy in the shortest possible time after discovery, but in no case later than 24 hours after discovery. For purposes of the notification requirement, the 10 pounds are measured by the weight of the PCB-containing material spilled rather than by the weight of only the PCBs spilled.

d. Spills of 10 pounds or less which are not addressed in paragraphs 1. a. or b. of this unit must be cleaned up in accordance with this policy (in order to avoid EPA enforcement liability), but notification of EPA is not required.

2. *Disposal of cleanup debris and materials.* All contaminated soils, solvents, rags, and other materials resulting from the cleanup of PCBs under this policy shall be properly stored, labeled, and disposed of in accordance with the provisions of 40 CFR 761.60.

3. *Determination of spill boundaries in the absence of visible traces.* For spills where there are insufficient visible traces yet there is evidence of a leak or spill, the boundaries of the spill are to be determined by using a statistically based sampling scheme.

##### B. Requirements for Cleanup of Low-Concentration Spills Which Involve Less Than 1 LB PCBs By Weight (Less Than 270 Gallons of Untested Mineral Oil)

1. *Decontamination requirements.* Spills of low-concentrations PCBs (as defined in Unit III) which involve less than 1 pound of PCBs by weight (i.e., less than 270 gallons of untested mineral oil containing less than 500 ppm PCBs) shall be cleaned in the following manner:

a. Solid surfaces must be double washed/rinsed (as defined in Unit III) except that all indoor, residential surfaces other than vault areas must be cleaned to 10 micrograms per 100 square centimeters ( $100 \mu\text{g}/\text{cm}^2$ ) by standard commercial wipe tests.

b. All soil within the spill area (i.e., visible traces of soil and a buffer of 1 lateral foot around the visible traces) must be excavated and the ground be restored to its original configuration by back-filling with clean soil (i.e., containing less than 1 ppm PCBs).

c. Requirements in paragraphs 1. a. and b. of this unit must be completed within 48 hours after the owner of the equipment, facility, or other source of PCBs (the responsible party) was notified or became aware of the spill.

2. *Effect of emergency or adverse weather.* Completion of cleanup may be delayed beyond 48 hours in case of circumstances including but not limited to, civil emergency, adverse weather conditions, lack of access to the site, and emergency operating conditions. The occurrence of a spill on a weekend or overtime costs are not acceptable reasons to delay response. Completion of cleanup may be delayed only for the duration of the adverse conditions. If the adverse weather conditions, or time lapse due to other emergency, have left insufficient visible traces, the responsible party must use a statistically based sampling scheme to determine the spill boundaries as required in Unit IV.A.3.

3. *Records and certification.* At the completion of cleanup, the responsible party or appropriate agent shall document the cleanup with records and certification of decontamination. The records and certification must be maintained for a period of 5 years. The records and certification shall consist of the following:

a. Identification of the source of the spill, e.g., type of equipment.

b. Estimated or actual date and time of the spill occurrence.

c. The date and time cleanup was completed or terminated (if cleanup was delayed by emergency or adverse weather: the nature and duration of the delay).

d. A brief description of the spill location.

e. Precleanup sampling data used to establish the spill boundaries if required because of insufficient visible traces, and a brief description of the sampling methodology used to establish the spill boundaries.

f. A brief description of the solid surfaces cleaned and of the double wash/rinse method used.

g. Approximate depth of soil excavation and the amount of soil removed.

h. A certification statement signed by the responsible party or his/her designated agent (e.g., a facility manager or foreman) stating that the cleanup



requirements have been met and that the information contained in the record is true to the best of his/her knowledge.

While not required for compliance with this policy, the following information would be useful if maintained in the records: (1) Additional pre- or postcleanup sampling; and (2) the estimated cost of the cleanup by man-hours, dollars, or both.

*C. Requirements for Cleanup of High-Concentration Spills and Low-Concentration Spills Involving 1 LB or More PCBs By Weight (270 Gallons or More of Untested Mineral Oil)*

Cleanup of low-concentration spills involving 1 lb or more PCBs by weight, and of all other spills of regulated materials shall be considered complete if all of the immediate requirements, cleanup standards, sampling, and recordkeeping requirements below are met.

1. *Immediate requirements.* The following four actions must be taken as quickly as possible and within no more than 24 hours (or within 48 hours for PCB Transformers) after the owner of the equipment or container from which the spill occurred, or other responsible representative of the owner such as a facility manager, was notified or became aware of the spill, except that actions described in paragraphs 1. b., c., and d. of this unit may be delayed beyond 24 hours if circumstances (e.g., civil emergency, hurricane, tornado, or other similar adverse weather conditions, lack of access due to physical impossibility, or emergency operating conditions) so require for the duration of the adverse conditions. The occurrence of a spill on a weekend or overtime costs are not acceptable reasons to delay response. Owners of spilled PCBs who have delayed cleanup because of these types of circumstances must keep records documenting the fact that circumstances precluded rapid response. The responsible party shall:

a. Notify the EPA regional office and the NRC as required by Unit IV.A.1 or by other applicable statutes.

b. Effectively cordon off or otherwise delineate and restrict an area encompassing any visible traces plus a 3-foot buffer, and place clearly visible signs advising persons to avoid the area, to minimize the spread of contamination as well as the potential for human exposure.

c. Record and document the area of visible contamination, noting the extent of the visible trace areas and the center of the visible trace area. If there are no visible traces, the responsible party shall record this fact and contact the regional office of the EPA for guidance

in completing statistical sampling of the spill area to establish spill boundaries.

d. Initiate cleanup of all visible traces of the fluid on hard surfaces and initiate removal of all visible traces of the spill on soil and other media, such as gravel, sand, oyster shells, etc.

If there has been a delay in reaching the site and there are insufficient visible traces of PCBs remaining at the spill site, the owner of the PCBs must estimate (based on the amount of material missing from the equipment or container) the area of the spill and immediately cordon off the area of suspect contamination. The owner must then utilize a statistically based sampling scheme to identify the boundaries of spill area as soon as practicable.

Although this policy requires certain immediate actions, as described above, EPA is not placing a time limit on completion of the cleanup effort since the time required for completion will vary from case to case. However, the Agency expects that decontamination will be achieved promptly in all cases and will consider the promptness of completion in determining whether a responsible party made good faith efforts to clean up in accordance with this policy.

2. *Requirements for decontaminating spills in outdoor electrical substations.* Spills which occur in outdoor electrical substations (as defined in Unit III) shall be decontaminated in accordance with paragraphs a. and b. of this unit. Conformance to the cleanup standards in paragraphs a. and b. of this unit shall be verified by postcleanup sampling as specified in Unit V. At such times as outdoor electrical substations are converted to another use, the spill site shall be cleaned up to the non-restricted access requirements in Unit IV.C.4.

a. Contaminated solid surfaces (both impervious and non-impervious) shall be cleaned to a PCB concentration of 100  $\mu\text{g}/100\text{ cm}^2$  (as measured by standard wipe tests).

b. At the option of the responsible party, soil contaminated by the spill will be cleaned: (1) To 25 ppm PCBs by weight, or (2) to 50 ppm PCBs by weight provided that a label or notice is visibly placed in the area. Upon demonstration by the responsible party that cleanup to 25 ppm or 50 ppm will jeopardize the integrity of the electrical equipment at the substation, the EPA regional office may establish an alternative cleanup method or level and place the responsible party on a reasonably timely schedule for completion of cleanup.

3. *Requirements for decontaminating spills in other restricted access areas.*

Spills which occur in restricted access locations other than outdoor electrical substations (as defined in Unit III) shall be decontaminated in accordance with paragraphs 3.a through e. of this unit. Conformance to the cleanup standards in paragraphs a. through e. of this unit shall be verified by postcleanup sampling as specified in Unit V. At such times as restricted access areas other than outdoor electrical substations are converted to another use, the spill site shall be cleaned up to the nonrestricted access area requirements under Unit IV.C.4.

a. High-contact solid surfaces (see definition of high-contact industrial surfaces in Unit III) shall be cleaned to 10  $\mu\text{g}/100\text{ cm}^2$  (as measured by standard wipe tests).

b. Low-contact, indoor, impervious solid surfaces will be decontaminated to 10  $\mu\text{g}/100\text{ cm}^2$ .

c. At the option of the responsible party, low-contact, indoor, nonimpervious surfaces will be cleaned either: (1) To 10  $\mu\text{g}/100\text{ cm}^2$ ; or (2) to 100  $\mu\text{g}/100\text{ cm}^2$  and encapsulated. The Regional Administrator, however, retains the authority to disallow the encapsulation option for a particular spill situation upon finding that the uncertainties associated with that option pose special concerns at that site. That is, the Regional Administrator would not permit encapsulation if he/she determined that if encapsulation failed at a particular site this failure would create an imminent hazard.

d. Low-contact, outdoor surfaces (both impervious and non-impervious) shall be cleaned to 100  $\mu\text{g}/100\text{ cm}^2$ .

e. Soil contaminated by the spill will be cleaned to 25 ppm PCBs by weight.

4. *Requirements for decontaminating spills in non-restricted access areas.* Spills which occur in nonrestricted access locations (as defined in Unit III) shall be decontaminated in accordance with paragraphs 4.a. through e. of this unit. Conformance to the cleanup standards in paragraphs 4.a. through e. of this unit shall be verified by postcleanup sampling as specified in Unit V. At such times as outdoor electrical substations and other restricted access areas are converted to another use, the spill site shall be cleaned up to the non-restricted access area requirements.

a. Furnishings, toys, and other easily replaceable household items shall be disposed of in accordance with the provisions of 40 CFR 761.60 and replaced by the responsible party.

b. Indoor solid surfaces and high-contact outdoor solid surfaces (see definition of high contact residential/



commercial surfaces in Unit III) shall be cleaned to 10  $\mu\text{g}/100\text{ cm}^2$  (as measured by standard wipe tests).

c. Indoor vault areas, and low-contact, outdoor, impervious solid surfaces shall be decontaminated to 10  $\mu\text{g}/100\text{ cm}^2$ .

d. At the option of the responsible party, low-contact, outdoor, nonimpervious solid surfaces shall be either: (1) cleaned to 10  $\mu\text{g}/100\text{ cm}^2$ ; or (2) cleaned to 100  $\mu\text{g}/100\text{ cm}^2$  and encapsulated. The Regional Administrator, however, retains the authority to disallow the encapsulation option for a particular spill situation upon finding that the uncertainties associated with that option pose special concerns at that site. That is, the Regional Administrator would not permit encapsulation if he/she determined that if the encapsulation failed the failure would create an imminent hazard at the site.

e. Soil contaminated by the spill will be decontaminated to 10 ppm PCBs by weight, provided that soil is excavated to a minimum depth of 10 inches. The excavated soil will be replaced with clean soil (i.e., containing less than 1 ppm PCBs), and the spill site will be restored (e.g., replacement of turf).

5. **Records.** The responsible party or appropriate agent shall document the cleanup with records of decontamination. The records must be maintained for a period of 5 years. The records and certification shall consist of the following:

a. Identification of the source of the spill (e.g., type of equipment.)

b. Estimated or actual date and time of the spill occurrence.

c. The date and time cleanup was completed or terminated (if cleanup was delayed by emergency or adverse weather: the nature and duration of the delay).

d. A brief description of the spill location and the nature of the materials contaminated (this information should include whether the spill occurred in an outdoor electrical substation, other restricted access location, or in a nonrestricted access area).

e. Precleanup sampling data used to establish the spill boundaries if required because of insufficient visible traces, and a brief description of sampling methodology used to establish the spill boundaries.

f. A brief description of the solid surfaces cleaned.

g. Approximate depth of soil excavation and the amount of soil removed.

h. Postcleanup verification sampling data and, if not otherwise apparent from the documentation, a brief description of

the sampling methodology and analytical technique used.

While not required for compliance with this policy, information on the estimated cost of cleanup (by man-hours, dollars, or both) would be useful if maintained in the records.

EPA will soon issue for publication in the **Federal Register** a proposed rule to require these recordkeeping measures to facilitate EPA's monitoring of PCB spill cleanups.

#### V. Sampling Requirements

Postcleanup sampling is required to verify the level of cleanup under Unit IV.C. 2 through 4. The responsible party, or designated agent, may use any statistically valid, reproducible, sampling scheme (either random samples or grid samples), provided that the requirements of paragraphs 1. and 2. of this unit are satisfied.

1. The sampling area is the greater of (1) an area equal to the area cleaned plus an additional 1-foot boundary, or (2) an area 20 percent larger than the original area of contamination.

2. The sampling scheme must ensure 95 percent confidence against false positives.

3. The number of samples must be sufficient to ensure that areas of contamination of a radius of 2 feet or more within the sampling area will be detected, except that the minimum number of samples is 3 and the maximum number of samples is 40.

4. The sampling scheme must include calculation for expected variability due to analytical error.

EPA recommends the use of the sampling scheme developed by the Midwest Research Institute (MRI) for use in EPA enforcement inspections: "Verification of PCB Spill Cleanup by Sampling and Analysis." Guidance for the use of this sampling scheme is available in the MRI report "Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup." Both the MRI sampling scheme and the guidance document are available from the TSCA Assistance Office at the address and telephone number given under "FOR FURTHER INFORMATION CONTACT." The major advantage of this sampling scheme is that it is designed to characterize the degree of contamination within the entire sampling area with a high degree of confidence while using fewer samples than any other grid or random sampling scheme. This sampling scheme also allows some sites to be characterized on the basis of composite samples.

At its discretion, EPA may take samples from any spill site. If EPA's sampling indicates that the remaining

concentration level exceeds the required level, EPA will require further cleanup. For this purpose, the numerical level of cleanup required for spills cleaned in accordance with Unit IV.B are deemed to be the equivalent of numerical cleanup requirements required for cleanups under Unit IV.C. 2 through 4. EPA may sample using its best engineering judgment, a statistically valid random or grid sampling technique, or both. When using engineering judgment or random "grab" samples, EPA will take into account that there are limits on the power of a grab sample to dispute statistically based sampling of the type required of the responsible party. EPA headquarters will provide guidance to the EPA regions on the degree of certainty associated with various grab sample results.

#### VI. EPA Enforcement and the Effect of Compliance With This Policy

Although a spill of material containing 50 ppm or greater PCBs is considered improper PCB disposal, this policy establishes requirements that EPA considers to be adequate cleanup of the spilled PCBs. Cleanup in accordance with this policy means compliance with the procedural as well as the numerical requirements of this policy. Compliance with this policy creates a presumption against both enforcement action for penalties and the need for further cleanup under TSCA. The Agency reserves the right, however, to initiate appropriate action to compel cleanup where, upon review of the records of cleanup, EPA finds that the decontamination levels in the policy have not been achieved. The Agency also reserves the right to seek penalties where the Agency believes that the responsible party has not made a good faith effort to comply with all provisions of this policy, such as prompt notification of EPA of a spill, recordkeeping, etc.

EPA's exercise of enforcement discretion does not preclude enforcement action under other provisions of TSCA or any other Federal statute. This includes, even in cases where the numerical decontamination levels set forth in this policy have been met, civil or criminal action for penalties where EPA believes the spill to have been the result of gross negligence or knowing violation.

The TSCA policy has been reviewed by the Office of Management and Budget.

This concludes EPA's TSCA policy. Unit VII, which follows, contains the rationale for the policy, the data on which the policy was based, and the



areas in which EPA lacks data. EPA solicits information to fill those gaps.

#### VII. Development of the TSCA Spill Cleanup Policy

As will become apparent in the discussion below, there are gaps in the information which was available to the Agency in developing the TSCA policy. The EPA designed the TSCA policy to enable the Agency and the regulated industry to gather data for filling the gaps. In all cases, through the cleanup levels established in the TSCA policy and by retaining authority to require additional cleanup where warranted, EPA has placed sufficient controls on the party responsible for cleanup to ensure that future PCB spills will be cleaned to levels that do not pose an unreasonable risk of injury to human health or the environment. The TSCA policy reflects the Agency's best judgment in light of available information. However, the Agency welcomes comment on, and additional relevant information about, the TSCA policy.

#### A. Risks Posed by Leaks and Spills of PCBs

1. *Frequency, amount, and nature of leaks and spills.* The TSCA policy establishes the measures which EPA considers to constitute adequate cleanup of PCB contamination resulting from activities regulated under TSCA. EPA expects that the TSCA policy will be most frequently applied to leaks and spills of PCBs which occur during the use of authorized equipment such as electrical transformers and capacitors. Thus, EPA's evaluation of the risks posed by spills of PCBs and the costs associated with cleanup following these spills focuses primarily on leaks and spills of PCBs from electrical transformers and capacitors.

EPA estimates that there are 121,000 (askarel) PCB Transformers currently in use, over 20 million mineral oil transformers contaminated with PCBs currently in use, and over 2.8 million large PCB Capacitors currently in use. Available data indicate that on an annual basis, about 3.3 percent of (askarel) PCB Transformers in use will leak or spill PCBs. The average PCB leak or spill from a PCB Transformer is 5.3 gallons, or about 66 pounds of PCBs. On an annual basis, EPA expects that about 264,000 pounds of PCBs are leaked or spilled into the environment from PCB Transformers.

EPA expects that about 17,000 of these PCB Transformers are located in electrical substations, where 37,000 pounds of spilled PCBs would be expected to be released each year. EPA

expects that about 27,000 PCB Transformers are located in industrial facilities, where an estimated 59,000 pounds of PCBs are spilled each year. Finally, 77,000 PCB Transformers are located in other areas (most likely, in or near commercial buildings), where an estimated 168,000 pounds of PCBs are released each year.

EPA expects that of the over 20 million PCB-containing mineral oil transformers in use, 76 percent are located in residential neighborhoods and public areas (i.e., schools, shopping centers, etc.). The majority of these transformers contain less than 500 parts per million PCBs. Available data indicate that the average leak or spill of PCBs from mineral oil transformers contains less than one-tenth of a tablespoon of PCBs, or 0.08 ounce of PCBs. On an annual basis, EPA expects that 627 pounds of PCBs are spilled from mineral oil transformers in residential and public areas. The remaining mineral oil transformers are located in outdoor electrical substations, industrial facilities, and rural areas. EPA estimates that less than 200 pounds of PCBs are leaked from these transformers each year.

Based on available data, EPA estimates that there are over 2.8 million PCB Capacitors in use. Of these 2.8 million capacitors, EPA estimates that 1.6 million are in use in substations or generating facilities and 1.2 million are inside buildings and on utility poles throughout the distribution system. Of the 1.6 million PCB Capacitors in use in electrical substations, EPA expects that over 12,000 leak each year, releasing about 200,000 pounds of PCBs. Of the 1.2 million PCB Capacitors in use inside buildings and on utility poles, EPA expects that over 9,000 leak each year, releasing about 154,000 pounds of PCBs.

Electrical transformers generally contain 100 times the amount of PCBs contained within PCB Capacitors. PCB Transformers typically contain between 300 and 500 gallons of PCB dielectric fluid, while PCB Capacitors generally contain about 3 gallons of PCB dielectric fluid. Unlike PCB Transformer spills, the majority of PCB Capacitor spills involve the violent rupture of the capacitor and the spraying of PCBs. Thus, PCBs spilled from energized capacitors are generally more widely distributed in the spill area than PCBs spilled from transformers. Available data indicate that for over 80 percent of capacitor spills, PCBs are distributed as far as 11 feet from the center of the spill.

PCBs spilled from transformers are more likely to leak from gaskets and valves, and the area contaminated from these types of spills is more directly

related to the amount of spilled material than is the case for explosive ruptures, such as occur from energized capacitors. EPA conducted a crude experiment in order to predict the maximum lateral spread of PCBs from other than explosive ruptures of electrical transformers; the maximum spread of water on low-porosity surfaces was tested and assumed to be equivalent to the maximum lateral spread of PCBs and PCB-contaminated oils on soil. EPA found that for every gallon of material spilled, one could expect a maximum area of contamination of about 3 square meters ( $m^2$ ). Although with time one would see a slight increase in lateral spread (assuming no runoff), for the most part, a 1 gallon spill of PCB material from a transformer cleaned up within 2 weeks of the spill would not be expected to contaminate greater than a  $3m^2$  area. This assumes of course that the material has not been tracked into other areas in the interim and that weather conditions have not caused further lateral spread. Spills of PCBs from deenergized capacitors, other authorized equipment, and containers of PCBs would be expected to behave in a similar manner to leaks and spills of PCBs from non-explosive transformer spills.

To summarize, the total amount of PCBs released from electrical transformers and capacitors each year from leaks and spills of PCBs is estimated at about 620,000 pounds (out of an estimated 163 million pounds of PCBs in use in this equipment). Of these PCBs, 38 percent are spilled in electrical substations and 62 percent of these PCBs are spilled in residential/commercial areas, rural areas, and industrial facilities. The majority of spilled PCBs are spilled from capacitors, and capacitor spills typically result from violent ruptures and lead to the distribution of PCBs at distances as far away as 11 feet from the center of the spill (total average spill area is about 380 square feet).

PCBs spilled from deenergized capacitors, transformers (excluding transformers involved in fires), other authorized equipment, and PCB Containers generally involve nonviolent ruptures and the maximum spread of the spilled material can be estimated by assuming  $3m^2$  of contamination per gallon of spilled material.

2. *Toxicity and environmental persistence.* EPA has concluded that PCBs are both toxic and persistent. In earlier rulemakings and Agency PCB health effects review documents, EPA has determined that persons exposed to PCBs can develop chloracne (a



disfiguring skin illness), and that based on laboratory animal data, there is a potential for reproductive effects and developmental toxicity as well as oncogenicity in humans exposed to PCBs. EPA has also concluded that PCBs are resistant to degradation and that they bioaccumulate and bioconcentrate in the fatty tissue of organisms. PCBs are very stable compounds which can persist for years when released into the environment. A more detailed discussion of EPA's findings on the health effects of PCBs can be found in the July 10, 1986 **Federal Register** (51 FR 28172).

Recently, the Office of Health and Environmental Assessment (OHEA) at EPA developed draft health advisories for PCBs in soil for use by EPA's Office of Emergency and Remedial Response (OERR). These health advisory levels are to be used as guidelines for initiating removal action for sites contaminated with PCBs. The draft health advisories developed by OHEA address both the oncogenic risks and other than oncogenic risks posed to humans by exposures to PCBs in soils at various levels.

The cancer potency slope factor for PCBs has been estimated by EPA's Cancer Assessment Group (CAG) and the Office of Toxic Substances (OTS) to be  $4.34 \text{ (mg/kg/day)}^{-1}$  and  $3.57 \text{ (mg/kg/day)}^{-1}$ , respectively. An average of these values ( $4.0 \text{ (mg/kg/day)}^{-1}$ ) was used in the OHEA draft health advisories as the PCB cancer potency factor. The OHEA calculation of the human dose associated with a  $1 \times 10^{-6}$  level of oncogenic risk is 0.0175 microgram/day. The Agency's assessment of risks associated with dermal and inhalation exposure to PCBs on solid surfaces was also based upon a cancer potency slope factor of  $4.0 \text{ (mg/kg/day)}^{-1}$  for PCBs.

**3. Potential for exposure to spilled PCBs.** In evaluating potential routes of exposure to PCBs which are leaked and spilled, EPA looked at the potential for exposure in nonrestricted access areas, restricted access areas, and restricted access, outdoor electrical substations. Further, since the TSCA policy is designed to apply to the large majority of spill situations, EPA focused on the routes of potential exposure associated with typical spill situations. Unique spill scenarios which present greater potential exposures or additional routes of exposure are excluded from application of the cleanup levels in the TSCA policy.

In developing the cleanup standards for PCB spills into soil and other ground media, EPA relied primarily on the exposure and risk analysis in the OHEA

health advisories for PCBs in soil. Exposure estimates used to evaluate the risk associated with various cleanup standards for solid surfaces such as metals, wood, asphalt, and concrete were developed by the EPA's Office of Toxic Substances. Neither the OHEA assessment for PCBs in soil nor the OTS estimates of exposure to PCBs in soil assume PCB contamination of other potential exposure pathways such as surface water, drinking water supplies, sewer systems, vegetable gardens, or grazing lands.

EPA believes that the large majority of spills which occur after the effective date of the TSCA policy will not involve these additional routes of exposure. Those exceptional spill situations which would result in these additional routes of exposure are excluded from the TSCA policy and must be cleaned up to levels determined by the appropriate EPA regional office. EPA excluded these spill situations from the scope of the policy because such spills may have to be cleaned up to lower levels in recognition of the potential for additional human exposures. Whether or not more stringent cleanup standards are necessary for these exceptional spill situations, the additional routes of potential exposure require some degree of evaluation on a case-by-case basis before making a final decision on appropriate cleanup levels in such circumstances.

Further, spills of PCBs into sand, soil, gravel, and other similar materials in special areas within the residential/commercial setting (i.e., areas where people may come into repeated daily contact, such as children's sandboxes, spills which pose particular concerns about future ground water contamination, spills which involve the combustion of PCBs (and the possible formation of toxic combustion byproducts such as polychlorinated dibenzofurans (PCDFs) and polychlorinated dibenzodioxins (PCDDs)), and spills onto farmland may be required to be cleaned up to lower levels, in recognition of the increased potential for exposure. The EPA regional offices should be contacted for guidance on appropriate cleanup for these types of spills.

The OTS dermal exposure assessments for PCBs on solid surfaces such as metal, concrete, and asphalt assume that PCBs are transferred to the skin at a relatively high rate (50 percent or more). This assumption is based on the results of an EPA-sponsored study on the transfer of PCBs from glass and unpainted metal to skin (human skin and pig skin) upon contact. EPA currently lacks data on the rate of

transfer of PCBs from rougher, porous surfaces such as concrete, asphalt or wood to human skin. Although EPA expects that the transfer rate may be significantly lower for rough, porous surfaces, in the absence of more extensive data, EPA has assumed that the transfer rate would be the same as for glass and unpainted steel.

**a. Exposures in nonrestricted access areas.** Areas which do not limit public access by man-made or naturally occurring barriers (i.e., residential, commercial, and unrestricted access rural areas) generally present the greatest potential for a high degree of human exposure to spilled PCBs. Spills of PCBs in residential/commercial areas may involve: (1) The contamination of soil, grass, sand, gravel, and other ground materials; (2) the contamination of outdoor solid surfaces such as metal, concrete, asphalt, and wood; (3) the contamination of indoor solid surfaces such as ceilings, walls, and floors; (4) the contamination of indoor vault areas; and (5) the contamination of household items such as clothing, toys, and patio furniture.

Spills of PCBs in unrestricted access rural areas may involve the contamination of materials like those listed under paragraphs (1) and (2) of this unit. Since human exposures to PCBs spilled in unrestricted access rural areas may at times approach levels of exposure in residential/commercial areas, EPA has included unrestricted access rural areas under the standards for residential/commercial spills. Typical exposures would, however, be expected to be lower in rural areas compared to typical exposures in the residential/commercial setting.

**i. Exposures from outdoor spills into soil, sand, gravel, and other similar materials.** The principal routes of exposure to PCBs spilled into soil in residential areas would be through inhalation and ingestion. Dermal exposures may also occur, although EPA expects that the PCBs will adsorb to the soil particles, reducing the rate of dermal absorption. OHEA has calculated the expected levels of human exposure to PCBs through inhalation and ingestion when PCBs are present at different levels in soil.

The OHEA assessment concludes that a PCB level of 1 to 6 ppm PCBs in soil in a residential/commercial area would be associated with a  $1 \times 10^{-5}$  level of oncogenic risk. OHEA assumed that the contaminated area is 0.5 acre (18,225 square feet), that 0.6 gram of soil is ingested per day at ages 0 to 6, and that the population is exposed for 50 percent of their lifetime. The placement of a 10-



inch cap of clean soil on top of soil containing 1 to 6 ppm PCBs reduces the expected level of oncogenic risk by an order of magnitude (to  $1 \times 10^{-9}$ ).

ii. *Exposures to spills onto solid surfaces—*a. *Outdoor surfaces.* PCBs spilled onto outdoor solid surfaces such as metal, concrete, asphalt, or utility poles in residential areas would result in some inhalation exposures and infrequent dermal exposure. For solid surfaces to which people would be expected to have frequent contact, higher levels of dermal exposure would be expected.

Examples of low-contact outdoor solid surfaces include asphalt and concrete roadways, roof areas, unmanned machinery, concrete pads beneath electrical equipment, curbing, and external structural building components. The estimated level of oncogenic risk associated with exposures to low-contact outdoor surfaces in residential/commercial settings (using reasonable worst-case assumptions about exposures to surface levels of  $10 \mu\text{g}/100 \text{ cm}^2$ ) is between  $1 \times 10^{-5}$  and  $1 \times 10^{-6}$ .

Sidewalks and patios where children play, fences, and automobiles are examples of residential/commercial surfaces to which people may come into frequent daily contact. The estimated level of oncogenic risk associated with exposures to such higher contact outdoor surfaces in residential/commercial settings (using reasonable worst-case assumptions about exposures to surface levels of  $0.5$  to  $1.0 \mu\text{g}/100 \text{ cm}^2$ ) is between  $1 \times 10^{-5}$  and  $1 \times 10^{-6}$ .

b. *Indoor surfaces.* Spill onto indoor hard surfaces may occur when outdoor electrical equipment ruptures catastrophically and sprays PCBs into a room through an open window or door. Spills onto indoor hard surfaces may also occur when electrical equipment inside a building leaks or spills PCBs and the leaked or spilled PCBs are distributed outside the electrical equipment room into other areas of the building through ventilation equipment and ductwork or by tracking. Inhalation exposures and dermal exposures would be expected following a spill of PCBs onto an indoor hard surface. Based on EPA's assessment of the risks posed by spills of PCBs onto indoor hard surfaces, dermal exposures would be expected to be the exposure route of highest concern (inhalation exposures to residual indoor PCB levels of  $10 \mu\text{g}/100 \text{ cm}^2$  are associated with a  $1 \times 10^{-6}$  level of oncogenic risk, while dermal exposures to this same level of PCBs on a low-contact indoor surface are associated with a  $1 \times 10^{-5}$  level of oncogenic risk).

From a perspective of dermal exposure, there are two types of potentially contaminated surfaces: low-contact surfaces and high-contact surfaces. Low-contact surfaces are those which are infrequently touched. In a residential/commercial setting, ceilings and wall areas above 6 feet in height would be considered low-contact surfaces. High-contact surfaces are those which are repeatedly contacted, often for relatively long periods of time. High-contact surfaces in a residential/commercial area include uncovered flooring, wall areas below 6 feet in height, stairways, bannisters, and railings. The estimated level of oncogenic risk associated with dermal exposures to  $1 \mu\text{g}/100 \text{ cm}^2$  of PCBs on low-contact indoor hard surfaces is between  $1 \times 10^{-5}$  and  $1 \times 10^{-6}$ . The National Institute of Occupational Safety and Health (NIOSH) has reported that  $0.5 \mu\text{g}/100 \text{ cm}^2$  is background level of PCBs on indoor hard surfaces, and this level of residual contamination on a high-contact indoor hard surface would be associated with a level of oncogenic risk between  $1 \times 10^{-5}$  and  $1 \times 10^{-6}$ .

c. *Easily replaceable/high-contact items.* PCBs released from electrical transformers or capacitors in indoor residential/commercial areas may result in the contamination of nonstructural, easily replaceable materials to which people have repeated daily contact (i.e., clothing, household furnishings, paper, notepads, office supplies, patio furniture, toys, swings, etc.). Since PCBs are expected to be readily absorbed through the skin, dermal contact with PCBs spilled onto these types of high-contact materials could result in significant exposures. Materials such as paper, clothing, and toys would themselves absorb the PCBs and be difficult, if not impossible, to clean completely. These materials would, however, be expected to release the PCBs slowly, resulting in continued dermal exposures to low levels of PCBs over a prolonged period of time. Depending upon the extent of contamination, inhalation exposures from these types of contaminated high-contact materials could also be significant.

iii. *Spills in indoor vault areas—*a. *Transformer vault areas and electrical equipment rooms.* One of the more common areas of PCB contamination from leaks and spills of PCBs from in-use electrical equipment are indoor transformer vault areas and electrical equipment rooms. Exposures to PCBs may occur through both inhalation and dermal routes, although since many transformer vaults and electrical equipment rooms are well ventilated

(reducing airborne PCB concentrations in the vaults), the route of exposure of highest concern in an electrical equipment room would be the dermal route. From the perspective of inhalation exposures alone, residual PCB levels of  $10 \mu\text{g}/100 \text{ cm}^2$  would be associated with oncogenic risks below  $1 \times 10^{-6}$ . Dermal exposures to PCBs on floors, ceilings, and walls in vault areas would be expected to be less than dermal exposures to PCBs on low-contact surfaces in residential/commercial areas because of less frequent contact with the contaminated surfaces. Residual PCB levels (on ceilings, floors, and walls) of  $10 \mu\text{g}/100 \text{ cm}^2$  in vault areas would be associated with a  $1 \times 10^{-5}$  to  $1 \times 10^{-6}$  level of oncogenic risk.

b. *Exposures in industrial and other restricted access (nonsubstation) locations.* PCB spills in the industrial setting may result in: (1) Outdoor contamination of soil, sand, gravel, and other similar materials; (2) contamination of both indoor and outdoor hard surfaces; and (3) indoor contamination of vault areas and electrical equipment rooms.

i. *Outdoor contamination of soil, sand, etc.* The principal route of human exposure to PCBs from a spill in soil is through the inhalation route. Soil ingestion and dermal contact with soil would not be expected to be significant routes of exposure at a restricted access site. PCB levels in soil of 25 ppm would present less than a  $1 \times 10^{-7}$  level of oncogenic risk to people on-site who work more than 0.1 km from the actual spill area (assuming that the spill area is less than 0.5 acre).

ii. *Contamination of hard surfaces.* Hard surfaces which may become contaminated in an industrial area include items such as lathes and other types of industrial equipment and machinery, in addition to surfaces such as asphalt, concrete, and wood. In industrial areas, outdoor hard surfaces such as concrete, asphalt, and structural building components would not be expected to result in as frequent exposures as may occur for these surfaces in a residential/commercial area. Thus, residual PCB levels on these outdoor industrial surfaces of  $100 \mu\text{g}/100 \text{ cm}^2$  (following cleanup of an "askarel" spill) would not be expected to result in significant exposures.

Indoor contamination of structural building components in industrial areas (e.g., ceilings, walls, and floors) and contamination of vaults or electrical equipment rooms would result in some inhalation exposures, but the principal route of exposure would be expected to be through dermal contact. Residual



PCB levels of  $10 \mu\text{g}/100 \text{ cm}^2$  on indoor low-contact surfaces in industrial areas would not be expected to result in significant exposures.

The highest exposure to surface contamination in an industrial setting would be to industrial workers using machinery contaminated with PCBs. Such workers may experience repeated dermal exposures to PCBs, and others may also experience such exposures if this equipment is sold, transported and/or reused. Dermal contact with PCBs may also lead to oral exposures during meals and while smoking. Depending upon the level of contamination, inhalation may also be significant, since workers using machinery are expected to be in close proximity to the equipment during its use. Higher levels of inhalation exposure can be anticipated if the contaminated equipment is operated under conditions of elevated temperature, since this would increase the volatility of any PCBs present on the equipment. Residual PCB levels of  $0.5 \mu\text{g}/100 \text{ cm}^2$  (reported by NIOSH as the background level for PCBs) on these types of high-contact surfaces would not result in significant exposures.

*c. Exposures in outdoor electrical substations.* PCBs released from transformers or capacitors in fenced-off electrical substations pose little risk of directly exposing members of the general population to PCBs. Electrical substations are typically located at distances greater than 0.1 kilometer from population areas and are generally fenced off to restrict access to authorized maintenance personnel only. Dermal and inhalation exposures by maintenance workers would, however, occur during servicing activities, an oral exposure may result from the transfer of PCBs from the hands to the mouth during meals or while smoking. Populations located at distances of greater than 0.1 kilometer from the site of the spill may incur inhalation exposures. However, the OHEA assessment document indicates that PCB levels in soil between 220 and 1,300 ppm present a  $1 \times 10^{-7}$  level of oncogenic risk to populations located at distances of 1 km or more from spill areas. Thus, PCB levels of 50 ppm in soil in an outdoor electrical substation would not be expected to result in significant exposures to the general population.

PCB spills onto hard surfaces in outdoor electrical substations may result in inhalation exposures and dermal exposures primarily to maintenance workers. The general population would not be expected to incur significant

inhalation exposures, and dermal contact would be unlikely given the fact that these areas are fenced off and have restricted access. Residual PCB levels of  $100 \mu\text{g}/100 \text{ cm}^2$  would not be expected to result in significant exposures to either the occasional maintenance worker or the general population.

*4. Conclusions about PCB leaks and spills.* Leaks and spills of PCBs from PCB Equipment in residential/commercial areas present the greatest potential for human exposure, when compared to other types and locations of PCB spills. The potential for exposure is high. Oral, dermal, and inhalation exposures to PCBs from spills in residential areas are likely, especially among children. Human exposures to PCBs spilled in unrestricted access rural areas also may at times be comparable to exposures in the residential setting. Available data on leaks and spills of PCBs indicate that the majority of PCBs spilled from PCB Equipment are spilled from PCB Capacitors and that there are many of these capacitors in use in residential areas.

Potential exposure to spilled PCBs or residual PCBs after cleanup of a spill in a restricted-access area is generally limited to industrial workers. Some types of contamination in restricted-access industrial facilities pose worker exposures as great as residential/commercial exposures. For example, contamination of control panels or manually operated machinery can result in frequent, if not continuous, dermal exposure to industrial workers. Other than any high-contact, manned equipment which may be located outdoors, spills outdoors in an industrial setting will result in a lesser degree of inhalation exposure to workers and the general population than similar spills in residential/commercial settings.

Spills in outdoor electrical substations pose the lowest potential exposures. Outdoor electrical substation are generally fenced off to restrict access to authorized personnel only. There is some possibility of dermal and inhalation exposures to maintenance workers. However, exposure to maintenance workers is less likely to be of a continuous or frequent nature than exposures to industrial workers.

#### *B. Costs of Cleanup*

*1. Factors influencing the cost of cleanup.* The cleanup of spilled PCBs from transformers and capacitors typically consists of a number of different measures: (1) Securing the spill site, (2) formulating a spill cleanup plan based on the nature of the spill, (3) removing or repairing the leaking equipment, (4) removing contaminated

material (e.g., soil), (5) cleaning contaminated surfaces and decontaminating or removing equipment contaminated during cleanup, (6) properly disposing of contaminated materials, (7) ensuring proper cleanup by sampling and chemical analysis, and (8) restoring the site.

The costs associated with phases (1), (2), (3), and (8) above are fairly fixed and will not vary significantly with more, less stringent cleanup requirements. The costs associated with cleanup phases (4), (5), (6), and (7) above are the more variable elements influencing the total cost of cleanup and are affected by several factors, including the concentration of PCBs spilled, the amount of PCB material spilled, the size or boundary of the spill area (often influenced by the time lapse between spill occurrence and cleanup), and the nature and stringency of cleanup requirements.

According to information gathered by OTS staff in telephone surveys and, in a few cases, written comments, the two most significant cost factors associated with various target cleanup levels are: (1) The number of times cleanup crews have to be sent to the site; and (2) whether or not postcleanup sampling is required. The imposition of sampling costs automatically has the effect of requiring that cleanup crews have to make at least two trips to the site (at least once to clean and at least once to restore the site after the sampling results have verified cleanup). The more stringent cleanup requirements are, the more likely that more than one attempt at cleanup will have to be made and that more than one set of samples will have to be taken.

Thus, the effect of stringent cleanup requirements coupled with requirements for postcleanup verification by sampling is to (1) mitigate exposures by ensuring a greater degree of cleanup; (2) exacerbate exposures by leaving the site open for a longer period of time; and (3) increase the costs of complying with the policy. EPA weighed these countervailing considerations in establishing the various cleanup requirements in the TSCA policy. The balance between the benefits associated with potential risk reductions on the one hand, and potential additional risks and costs imposed by more stringent requirements on the other, weigh out differently depending on the potential for exposure and the degree of certainty that less stringent requirements will result in adequate cleanup.

As is discussed below, EPA has limited data on the cost of cleanup, particularly in the area of cleaning solid



surfaces such as metal or concrete to various levels. Further, the data that are available cannot readily be analyzed to determine the impact of variables other than the degree of cleanup and the extent of sampling performed at the site (e.g., amount spilled, types of ground materials or surfaces contaminated, and time lapse between spill occurrence and cleanup). EPA has evaluated available data and estimated the ranges of incremental costs associated with cleanup to various levels.

a. *Cleanup of spills in soil, sand, gravel, etc.* Available information suggests that the cost of cleanup of soil to "background" levels of PCBs can be 3 to 15 times greater than the cost of cleanup to 50 ppm. Further, since PCBs are ubiquitous in the environment and are found at low concentrations throughout the world (in areas where PCBs have never been used), target levels for PCBs spill cleanup which are lower than background levels in certain areas can result in very high cleanup costs. Large volumes of soil may have to be excavated for the removal of what may ultimately be only 1 to 2 pounds of PCBs. For example, there are about 2 pounds of PCBs present in four truckloads of soil containing 25 ppm PCBs. After excavation, these 2 pounds of PCBs may, under the PCB disposal regulations, be transferred to a PCB landfill for disposal.

EPA estimated the costs associated with the cleanup of a PCB spill in soil using two sets of available data on the costs of cleanup. One set of data on the costs associated with the cleanup of a 0.5 acre site contaminated with PCBs and PCB Equipment suggests that cleanup to 50 ppm would cost on the order of \$105,000; cleanup to 25 ppm would cost on the order of \$214,000; and cleanup to "background" levels of PCBs would cost on the order of \$279,000. Using these data to estimate cleanup costs for different target levels of soil cleanup for typical PCB Capacitor spills, EPA estimates that the cleanup of a typical PCB Capacitor spill to 50 ppm would cost on the order of \$2,100; cleanup to 25 ppm PCBs would cost on the order of \$4,280; and cleanup to "background" levels of PCBs would cost on the order of \$5,580.

EPA also estimated the costs of cleanup to various target levels using data on the cost of cleanup in actual capacitor spill situations. These data indicate that while the costs of cleanup to level between 50 and 25 ppm do not vary significantly, cleanup to levels lower than 25 and 20 ppm result in dramatically higher costs of cleanup. Based on these actual capacitor spill

cleanup data, the cleanup of a typical PCB Capacitor spill to 50 or 25 ppm would cost on the order of \$4,000; cleanup to 10 ppm PCBs would cost on the order of \$10,000; and cleanup to background levels could cost on the order of \$60,000 to \$140,000.

EPA estimates that the actual incremental costs of cleaning typical capacitor spills to various levels would fall in the range between the two sets of estimates. Assuming that there are about 20,000 PCB Capacitor spills each year, EPA's estimates of the total annual cost of cleanup of PCB Capacitor spills to 50 ppm, 25 ppm, and "background" levels is \$42-80 million, \$80-86 million, and \$112 million to over \$2 billion, respectively.

Alternatively, information indicates that for lower concentration spills (i.e., spills of material containing less than 500 ppm PCBs—generally from oil-filled electrical equipment), cleanup of visible traces plus a 1 foot boundary of spills onto soil and other ground media within a few days of the spills will sufficiently ensure that PCB concentrations in the soil will be cleaned to a few parts per million. Therefore, the additional costs associated with sampling may not be justified by any incremental risk reduction where the spill is of low-concentration spills.

b. *Cleanup of PCBs spilled on surfaces.* EPA lacks data on the practicality, feasibility, and incremental costs associated with the cleanup of PCBs on hard surfaces. Comments from utility representatives as well as EPA regional office personnel suggest that costs of cleaning solid surfaces are significantly influenced by the nature of the contaminated surface (i.e., whether it is a porous surface such as concrete or an impervious surface such as metal). Thus, cleaning porous, hard surfaces to  $1 \mu\text{g}/10\text{cm}^2$  may be very difficult, if not impossible, to achieve through generally accepted methods of cleanup (i.e., scrubbing and cleansing of surfaces) because of the penetration of PCBs below the surface.

EPA has evaluated some data on the costs of cleaning PCB-contaminated surfaces to various levels. However, all of the available data are from historical PCB spill sites which are typically more difficult to clean than fresh spills. Further, EPA's experience suggests that the relative difficulty of cleaning porous surfaces versus impervious surfaces increases as the amount of time between spill occurrence and cleanup increases.

Surface cleanup standards which are not achievable would in effect require the breakup and removal of materials such as concrete. Data on the breakup,

removal, and replacement of concrete materials at historical spill sites indicate that the costs of such remedial action may range from one to several million dollars. While historical sites generally involve more extensive areas of cleanup, both in terms of PCBs absorbed into the materials and the area of contamination, these data do suggest that there are significant costs associated with a removal requirement for solid surfaces. EPA, however, has no comparative cost data on the differences in cost between cleaning solid surfaces by conventional methods versus removing solid surfaces.

An EPA-sponsored Midwest Research Institute study of the removal of PCBs from surfaces such as painted and unpainted steel, asphalt, concrete block, wood, and poured concrete demonstrates fairly clearly that a time lapse of several days before initiation of cleanup can significantly impede the efficacy of surface cleanup methods. That study also suggests that the washing of rough, porous hard surfaces with solvent is not very effective in removing the spilled askarel PCBs. Cleanup by washing/wiping within a few days following low concentration spills, however, is expected to be effective in reducing surface concentrations of PCBs to levels which will not pose unreasonable risks. This is primarily because of the small amount of PCBs actually present in most mineral oil spills.

In lieu of potentially impracticable surface cleanup standards, or removal standards, EPA also considered the option of requiring cleanup to an achievable surface cleanup standard and encapsulation with an appropriate epoxy resin or other sealant. Anecdotal information suggests that encapsulation is likely to be less costly than removal of solid surfaces by 1 to 3 orders of magnitude. While EPA believes that encapsulation can significantly reduce both dermal and inhalation exposure to residual PCB concentrations on solid surfaces, the Agency is aware of no empirical data which verify the effectiveness of encapsulants in reducing exposures. Anecdotal information provided by EPA regions and members of the regulated community raises doubts as to the long-term effectiveness of encapsulation because of the tendency of many sealants to peel or chip off over time.

In the absence of adequate data on the costs of cleaning fresh PCB spills on solid surfaces, the standards which appear in the TSCA policy for the cleanup of hard surfaces primarily reflect concerns about the potential for



exposure to these levels of residual PCBs which remain after cleanup. The TSCA policy does allow for less stringent cleanup options coupled with EPA-approved encapsulation measures where the spill occurs on porous surfaces outdoors (or on low-contact surfaces indoors in restricted-access facilities) because of concerns about the achievability of more stringent cleanup levels on porous surfaces. The encapsulation option is allowed for certain low-contact solid surfaces in order to allow the development of data on the efficacy of encapsulation in mitigating exposures to residual PCBs on solid surfaces.

**2. Conclusions about costs of cleanup.** The costs associated with the cleanup of spills of PCBs into soils and other similar materials are principally influenced by the area of contamination and the target levels set for cleanup. The lower the target level, the more testing, excavation, and removal, and the higher the cost. The cleanup of spilled PCBs in soil from PCB Transformers and Capacitors to "background" levels of PCBs costs three times as much to an order of magnitude more than cleanup to 50 ppm, and several times as much as cleanup to 25 ppm. On an annual basis, hundreds of millions of dollars are being spent for the cleanup of PCBs from transformer and capacitor spills.

EPA expects that the costs associated with the cleanup of contaminated surfaces will increase as cleanup levels or standards decrease and that at some point, excavation and removal may be the only choice to reduce PCB levels further. Data on the practicality, feasibility, and cost of cleanup to the levels discussed in this TSCA policy and data on the effectiveness and cost of encapsulation are necessary so that EPA can more accurately weigh the cost effectiveness of various surface cleanup requirements.

EPA is seeking data on the incremental costs associated with the cleanup of different types of surfaces to the levels discussed in this TSCA policy. In the absence of data to support a determination that these levels are not practically achievable at a reasonable cost (or data that support a determination that exposures will be significantly lower than those assumed by current Agency assessments), the policy includes the surface cleanup standards discussed in Unit IV.

EPA is also seeking data on the effectiveness (in terms of risk reduction), cost, and long-term durability of the use of sealants and encapsulating materials. If encapsulating materials and sealants can be demonstrated to be more cost

effective than removal, EPA will retain the provisions allowing, for low-contact, porous surfaces, the use of such sealants in lieu of cleanup to more stringent standards.

#### *C. Risk/Benefit Discussion of Cleanup Requirements*

**1. Scope and general requirements of the policy.** The TSCA policy applies to spills which EPA can require to be cleaned under TSCA enforcement authority (spills of 50 ppm or greater PCBs which generally occur during EPA-regulated use, processing, distribution in commerce, or storage of PCBs) and which occur after the effective date of the policy. The policy is prospective because historical spills tend to involve more extensive areas of contamination and because many of the requirements of the policy are based on the assumption that the spill area will be cleaned or contained within 1 or 2 days of spill occurrence.

PCB is an oily material which leaves stains on soil and surfaces. While EPA recognizes that the visibility of PCBs on soils and surfaces is inversely related to the amount of time elapsed from release to discovery and that weather conditions may also influence spill visibility, EPA expects that for the majority of PCB spills, visible traces of PCBs will remain at the time of spill discovery. The exception to this rule is for spills which are undiscovered for an extended period of time and spills which are followed by adverse/severe weather conditions. In these cases, the TSCA policy requires the use of an appropriate statistical sampling scheme to define the boundaries of the spill area.

EPA believes that one of the principal ways of minimizing human and environmental exposures to spilled PCBs is to prevent the spread of spilled PCBs (e.g., by cordoning off the area) and to initiate cleanup actions as soon as practically possible. This minimizes the likelihood that materials will be spread beyond the spill area through tracking and runoff and reduces the probability of surface water and drinking water contamination. EPA believes that response time in initiating remedial action may be one of the most significant factors influencing the magnitude of risks following PCB spills, especially in residential areas.

**2. Spills of low concentrations PCBs involving less than one lb of PCBs.** Where the spilled material is relatively low in PCB concentration (i.e., containing 50 ppm or greater, but less than 500 ppm PCBs), the TSCA policy allows cleanup in accordance with procedural performance requirements (i.e., double wash/rinse for solid

surfaces and removal of visible traces plus a 1-foot lateral boundary for soil and other ground media provided that the minimum depth of excavation is 10 inches) rather than requiring sampling to verify that numerical cleanup standards have been met.

The procedural requirements are based upon data indicating that for low-concentration spills, double washing/rinsing of surfaces and removal of visible traces plus a buffer on soil will successfully reduce the PCB concentration in the spill area to the numerical standards specified for the higher concentration spills. The essential difference is that for spills of low-concentration PCBs, sampling is not required to verify that numerical standards are achieved, provided that the responsible party or designated agent certifies that the cleanup has been performed in accordance with all of the requirements of the policy. The enforcement provisions of the policy specify that should the sampling data indicate that the numerical standards have not been met, or that the area cleaned does not encompass all areas of actual contamination (as determined by sampling or indicated by remaining visible traces), the regional office will require additional cleanup.

**3. Spills of 500 ppm or greater PCBs and spills of low-concentration PCBs of more than 1 lb PCBs by weight—a. Spills in nonrestricted access areas.** The most stringent requirements for the cleanup of spilled PCBs apply to PCB spills in residential/commercial/unrestricted access rural areas. The TSCA policy requires that materials such as household furnishings, toys, and swingsets be disposed of rather than decontaminated. Generally, these types of materials pose a high potential for exposure and are very difficult to clean. Indeed, the costs of cleanup of these types of materials to the limit of detection of PCBs (which would be required given the high potential for repeated daily exposures) would in many cases exceed replacement costs.

Soil and other similar materials in residential/commercial areas must be cleaned up to 10 ppm PCBs, and a cap of clean materials containing less than 1 ppm PCBs (the average background level for PCBs in soil) equal to a minimum of 10 inches must be placed on top of the excavated area. The OHEA risk assessment for PCBs in soil indicates that 1 to 6 ppm PCBs in 0.5 acre of residential soil is associated with a  $1 \times 10^{-6}$  level of oncogenic risk and that placing a 10-inch cap of clean soil reduces this level of oncogenic risk by an order of magnitude. PCB Capacitor



spills typically result in the contamination of significantly less than 0.5 acre.

For an average PCB Capacitor spill, the difference in costs associated with cleaning up PCBs to 10 ppm versus to below 1 ppm ("background" levels) in a residential area is estimated to be about \$500. Assuming 9,000 PCB Capacitor spills each year in residential areas, the estimated incremental costs associated with cleanup of these spills to less than 1 ppm versus cleanup to 10 ppm is \$4.5 million.

Thus, EPA believes that soil containing 10 ppm PCBs (covered by a cap containing PCBs below the practical limits of quantitation) in a residential/commercial area would not present unreasonable risks to public health or the environment.

The surface standards presented in the TSCA policy are based primarily on the potential for exposure to PCBs remaining on surfaces in residential/commercial areas and the estimated level of risk posed by these residual PCBs. EPA lacks data on the incremental costs associated with cleanup to different surface standards and is soliciting these data.

The TSCA policy does allow for less stringent surface cleanup options coupled with EPA-approved encapsulation measures where the spill occurs on porous, low-contact surfaces outdoors because of concerns about the achievability of more stringent cleanup levels on porous surfaces. The encapsulation option is allowed for low-contact solid surfaces outdoors in order to allow the development of data on the efficacy of encapsulation in mitigating exposures to residual PCBs on solid surfaces.

*b. Industrial and other restricted access spills.* Spills of PCBs in industrial areas and other restricted access locations would present lower risks than spills in residential/commercial areas because access to these areas is controlled. Inhalation exposure is considered to be the principal route of exposure to PCBs in soil, sand, or gravel in an industrial area. Dermal exposures would, however, be likely when PCBs are spilled on manned machinery and equipment. EPA believes that the level of risk posed by 25 ppm PCB in soil at a restricted access facility would not present significant risks either to the typical worker or to the general public. EPA also believes that the surface standards of 100  $\mu\text{g}/100\text{ cm}^2$  for low-contact outdoor surfaces and 10  $\mu\text{g}/100\text{ cm}^2$  for indoor low-contact surfaces (and vaults) and high-contact surfaces in a restricted access industrial facility

would not present significant risks to workers or to the general population.

Further, there are significant costs associated with the cleanup of soil, sand, gravel, and other similar materials in an industrial facility to background levels compared to cleanup to 25 ppm PCBs. Thus, EPA believes that cleanup of soil, sand, gravel, and other similar materials in an industrial facility to 25 ppm would not present unreasonable risks to public health or the environment.

The surface standards for industrial facilities and other restricted access locations which are presented in the TSCA policy are based on the expected level of exposure to residual PCBs left on industrial surfaces after cleanup. EPA lacks data on the incremental costs associated with cleanup to different standards and is soliciting these data. The TSCA policy does allow for less stringent cleanup options coupled with EPA-approved encapsulation measures where the spill occurs on porous, low-contact surfaces because of concerns about the achievability of more stringent cleanup levels on porous surfaces. The encapsulation option is allowed for certain low-contact solid surfaces in order to allow the development of data on the efficacy of encapsulation in mitigating exposures to residual PCBs on solid surfaces.

*c. Outdoor electrical substation spills.* The least stringent requirements for the cleanup of spilled PCBs apply to spills in outdoor electrical substations. This reflects the lower potential for exposures and fewer people potentially at risk of exposures to PCBs spilled in these areas. Spills of PCBs from PCB Equipment into solid materials such as soils in electrical substations must be cleaned up to 25 ppm PCBs or to 50 ppm PCBs, provided that a label is placed in the spill area indicating that a PCB spill has occurred. The OHEA risk assessment for PCBs in soil indicates that a PCB level of 50 ppm PCBs in soil located more than 1 kilometer from a population would present less than a  $1 \times 10^{-7}$  level of oncogenic risk. This risk assessment assumes only inhalation exposures at distances of 1.0 kilometer (or approximately 1,093 yards) from the spill site.

The surface standards which appear in the TSCA policy are primarily based on the expected exposures and risks posed by contact with the residual PCBs. EPA lacks data on the incremental costs associated with cleanup to higher or lower levels.

#### *D. Scope of the Policy*

EPA expects the large majority of PCB spills subject to decontamination under

TSCA to conform to the typical spill scenarios considered in developing the TSCA policy. However, some small percentage of spills will warrant more stringent cleanup requirements because of additional routes of exposure or significantly greater exposures than those associated with typical PCB spills. Further, there may be exceptional spill situations which require less stringent cleanup or a different approach to cleanup because of factors associated with the particular spill which mitigate expected exposures and risks or which make cleanup to these requirements impracticable. Therefore, the policy (1) excludes certain situations from the scope of this policy; (2) discusses other spill situations which may warrant the use of EPA authority to require more stringent requirements and (3) retains EPA flexibility to allow alternative or less stringent decontamination measures when the responsible party demonstrates the presence of risk-mitigating factors or demonstrates the impracticability of applying this policy to a particular spill situation. For those exceptional spill situations which are excluded from the policy or in which EPA may exercise flexibility based on site-specific considerations, the EPA regions have the authority to determine cleanup requirements.

The TSCA policy excludes certain spill situations from the automatic applications of the numerical cleanup requirements in the policy (i.e. spills directly into water, sewers, vegetable gardens, and grazing areas, and spills which directly contaminate surface waters prior to cleanup) because those situations will always present routes of exposure to PCBs which are not associated with the typical spills considered in developing the TSCA policy. These exceptional spill situations may not always require more extensive cleanup. However, they will always require some level of site-specific analysis to determine appropriate cleanup measures.

Although EPA expects the majority of remaining spills to be subject to this policy, occasionally the site-specific characteristics (e.g., depth to ground water, type of soil, and the presence of a shallow well) may pose exceptionally high potential for ground water contamination by residual PCBs (i.e., those PCBs remaining after cleanup to the standards specified in this policy). Spills which pose a high degree of potential for ground water contamination are not automatically excluded from the policy as are spills into surface waters because the presence of such potential may not be



readily apparent. EPA feels that automatically excluding such spills from the scope of the policy could result in the delay of cleanup—a particularly undesirable outcome if potential ground water contamination is a significant concern. The Agency will, however, require cleanup to more stringent decontamination standards upon making a determination that such additional cleanup is necessary because of ground water concerns associated with residual contamination based upon comparison of the site characteristics to ground water modeling and exposure assessments which have been developed by EPA in support of this policy.

Additionally, spill situations involving significantly larger areas of contamination than those assumed in developing this policy (e.g., <0.5 acre in soil and 550 ft<sup>2</sup> on indoor surfaces), spills in areas involving repeated daily contact such that the potential for dermal contact may be significantly higher than assumed in developing this policy (e.g., spills resulting from violent equipment rupture during which PCDFs and/or PCDDs were formed, and spills onto farmland on which root crops are grown) may require more stringent levels of cleanup. In such situations, the Regional Administrator may require cleanup in addition to that required by the policy. In those circumstances, the Regional Administrator must notify the Director, Office of Toxic Substances, of his finding and the basis for the finding.

The TSCA policy also retains EPA's flexibility to allow less stringent, or alternative decontamination measures based upon site-specific considerations. EPA will exercise this flexibility if the responsible party demonstrates that cleanup to the numerical decontamination levels is clearly unwarranted because of risk-mitigating factors, or that compliance with the procedural requirements or numerical standards in the policy is impracticable at a particular site. For example, the responsible party may show that a dirt road need not be decontaminated to the levels in this policy because exposure to residual PCB concentrations on a dirt road will be significantly mitigated when the road is paved with concrete or asphalt in the immediate future. Alternatively, the responsible party may demonstrate that cleanup to the numerical standards in the policy may threaten the structural integrity of major equipment installations or buildings.

For purposes of delineating the scope of the TSCA policy, as well as to provide EPA regional offices and the regulated community with guidance on

whether a particular spill may require more stringent standards for cleanup. EPA has performed some preliminary analyses of these potentially higher-risk spill situations. EPA evaluated the exposures and risks associated with these potential higher-risk situations using reasonable worst-case assumptions to identify cases where strict application of the standards in this policy may be inappropriate. In addition, EPA believes that some spill situations may require special action (e.g., additional immediate actions to prevent contamination of sewers where there is a real potential for such contamination).

1. *Spills into sewers.* EPA has not assessed the exposures associated with the release of PCBs into sewers because of the lack of information about the behavior of spilled PCBs in a system of sewer pipes. Being denser than water, PCBs may collect in depressions and irregularities in the sewer pipes, providing a long-term source of release of PCBs into the environment. On the other hand, the PCBs may be carried from place to place in the sewer system. Thus, there is no method for estimating which segments of the system are contaminated, what the concentration of PCBs is, or how long the PCBs will remain in the system. Because of the difficulty of evaluating the behavior of PCBs in sewer systems and because of the practical problems of decontaminating a sewer system, PCB spills into sewage are not covered by this policy. Each regional office will determine the requirements for adequate cleanup of sewer systems, treatment works, and sewage contaminated with PCBs on a case-by-case basis.

2. *Spills which may result in ingestion exposure through drinking water and fish.* To evaluate the potential for exposures through the ingestion of drinking water and/or fish contaminated with PCBs, EPA looked at four spill situations using reasonable worst-case assumptions: (1) PCBs are spilled into a pond and the sediment is cleaned to 10 ppm; (2) PCBs are spilled into a river and the sediment is cleaned to 10 ppm; (3) PCBs are spilled on the bank of a stream and the soil is cleaned to 25 ppm; and (4) PCBs are spilled on soil and cleaned to 25 ppm, assuming that the PCBs will enter ground water.

Preliminary results indicate that where PCBs enter surface water in a pond, the ingestion of fish and/or drinking water from the pond after the sediment has been cleaned to 10 ppm in accordance with the policy may result in significant human exposures. While rivers have higher flow rates than

ponds, so that cleanup of river sediment to 10 ppm PCBs may not pose significant human exposures, PCB contamination in surface water poses important considerations in addition to the risks associated with residual PCB concentrations in sediment, in much the same way as sewer contamination. Thus, all spills directly into waterways and spills which contaminate waterways before cleanup are excluded from the TSCA policy.

Where PCBs are spilled near a waterway and the soil is cleaned to 25 ppm PCBs, PCBs can enter surface water through runoff from the contaminated bank. (EPA assumed that runoff into the stream occurs only after the spill area has been cleaned to 25 ppm.) Based on reasonable worst-case assumptions, the consumption of drinking water and/or fish from the stream for 70 years will not pose risks of concern and are therefore included in the scope of the policy. However, should the spill contaminate surface water cleanup, the spill must be cleaned to site-specific requirements. Therefore, the responsible party should take special measures to contain the spill area and prevent the spread of PCBs into the waterway.

In looking at the possible exposures associated with soil cleaned to 25 ppm through the ingestion of drinking water from contaminated ground water, the climate, soil and ground water configuration were assumed to be such as to maximize PCB concentrations in ground water. Significant risks may be posed by the ingestion of drinking water from very shallow wells (i.e., dug wells taking in water at the source of loading) in areas where soil characteristics and depth to aquifer maximize the potential for leaching into ground water. However, the ingestion of drinking water from a well located a horizontal distance of 50 meters from the spill site in these areas does not appear to pose significant risks. Thus, while the majority of spills will not result in unreasonable risks of human exposure due to ground water contamination, some unique spill scenarios will pose potential ingestion exposure through ground water contamination.

The TSCA policy specifically reserves EPA's authority to impose more stringent cleanup requirements in cases where site characteristics present special risks of ingestion of PCBs through ground water contamination. These spills are not automatically excluded from application of the policy because the potential for ground water contamination may not be readily apparent.



3. *Ingestion of milk from dairy cattle grazing on land contaminated with PCBs.* Using reasonable worst-case estimates, the Agency evaluated the potential risks to humans drinking milk from cattle which grazed on farmland where a PCB spill has been cleaned to 25 ppm. In the event of a spill on farmland, grazing dairy cattle can ingest the PCB-contaminated soil by consuming soil while grazing and from eating plants and roots from a PCB-contaminated site. The cattle can then accumulate unmetabolized residues of the PCBs in milk fat and excrete them through milk. Assuming that the contaminated milk is consumed by the farm residents, worst-case risk estimates indicate that reducing the PCB concentration in the soil to 10 or 25 ppm PCBs may not be adequate to prevent against unreasonable risks to human health.

4. *Ingestion of vegetables grown on contaminated home gardens and farmland.* EPA performed some preliminary analyses of the risks posed by the consumption of vegetables grown on a spill area cleaned to 25 ppm PCBs in the case of farmland and 10 ppm in the case of residential gardens. Assuming that vegetables grown on that garden or farm are used to provide the entire vegetable component of the diet of the site residents, cleaning soil to the levels in the policy may not be adequate. Vegetables are more likely to become contaminated through contact with contaminated dirt rather than through plant uptake. Thus, EPA believes that the potential for exposure to spilled PCBs through ingestion of crops grown on-site is greatest where the vegetables are root crop (e.g., carrots and potatoes).

5. *Exposure from larger spills.* In the above situations, the Agency focused on routes or ingestion exposure. The Agency has also evaluated situations which may significantly increase dermal or inhalation exposures. A principal factor in determining the magnitude of inhalation exposure is the size of the spill area. In estimating the risks associated with the cleanup levels in the policy for typical spills from electrical equipment, EPA relies on a risk assessment which assumes a contaminated area of 0.5 acre (see discussion in Unit VII.A.3.). Since the area of the typical spill addressed by this policy is expected to be  $\frac{1}{20}$  of the size assumed in the risk assessment, EPA believes that the cleanup standards in this policy sufficiently protect against unreasonable risks from inhalation exposure to PCBs remaining after the cleanup of a spill from electrical

equipment. Cleanup standards for larger spills, that is, greater than 0.5 acre, would be established by the EPA regional office after a consideration of both the level of risk posed by cleanup to different levels and the incremental costs associated with such cleanup.

#### E. Issues

As is apparent in the discussion under Unit VII.A, there are gaps in the information which was available to the Agency in developing the TSCA policy, particularly in the area of cleanup costs. Given the limited data available to the Agency in developing a PCB Spills Cleanup Policy under the TSCA unreasonable risk standard, EPA has generally taken an environmentally conservative approach by establishing cleanup requirements based on risk and exposure considerations, and by excluding certain potentially higher-risk spill scenarios from the scope of the policy.

In a few areas where available data support the conclusion that less restrictive requirements will not compromise the protection of human health or the environment, the Agency has allowed less restrictive cleanup options (i.e., the exclusion of low-concentration spills from sampling requirements and the encapsulation option for spills on low-contact, porous surfaces). One purpose of allowing such options is to provide an opportunity for the development of additional information on the relative efficacy and costs of such options. EPA expects that the regulated industry will make good faith efforts to submit additional data gathered under the TSCA policy.

1. *Decontamination of surface.* The TSCA policy includes surface standards (in micrograms ( $\mu\text{g}$ ) per 100 square centimeters ( $100\text{ cm}^2$ )) for cleanup of PCB spills on hard surfaces such as wood, concrete and asphalt, and impervious surfaces such as metal or glass. For spills of PCBs at concentrations of 50 ppm or greater but less than 500 ppm onto hard or impervious surfaces in other than residential/commercial areas, this policy allows cleanup by double rinsing with an appropriate solvent.

The consensus proposal submitted by EDF, NRDC, EEI, NEMA, and CMA in May 1985 proposed that surfaces in residential areas be cleaned to  $100\text{ }\mu\text{g}/100\text{ cm}^2$ . The consensus further proposed that surfaces in all other areas be cleaned either to  $100\text{ }\mu\text{g}/100\text{ cm}^2$  or triple rinsed at the discretion of the responsible party. A revised consensus proposal submitted in October 1986 modified the proposed surface standards to  $10\text{ }\mu\text{g}/100\text{ cm}^2$  for

impervious surfaces in areas other than outdoor electrical substations. The revised proposal maintained the  $100\text{ }\mu\text{g}/100\text{ cm}^2$  level for all porous surfaces, arguing the infeasibility of cleaning to lower levels on porous surfaces.

After reviewing the consensus proposal, the Agency contemplated requiring that potential high-contact surfaces be cleaned to  $10\text{ }\mu\text{g}/100\text{ cm}^2$  and that spills of 500 ppm or greater on low-contact surfaces be cleaned to  $100\text{ }\mu\text{g}/100\text{ cm}^2$ . The Agency further contemplated allowing the triple-rinse option for spills of 500 ppm or greater in reduced access areas and for all spills onto surfaces in outdoor electrical substations.

Lacking adequate information with which to assess potential exposures to surfaces cleaned to those levels, the Agency initiated some studies to (1) evaluate the risks posed by the  $10\text{ }\mu\text{g}/100\text{ cm}^2$  and  $100\text{ }\mu\text{g}/100\text{ cm}^2$  and (2) test the efficacy of rinsing/washing as a cleanup measure. The results of these studies indicate (a) that high contact surfaces such as those in residential play areas or manually operated machinery may require surface standards more stringent than the  $10\text{ }\mu\text{g}$  to  $100\text{ }\mu\text{g}/100\text{ cm}^2$  standards and (b) that while even one wash or rinse of a solid surface would be adequate for mineral oil spills (50 to 499 ppm PCBs), the wash/rinse procedural performance standard is relatively ineffective in removing higher concentration PCBs from porous surfaces such as concrete block, wood, and asphalt. Presented below is additional detail on these preliminary studies and requests for data and information pertaining to the cleanup of surfaces.

2. *Surface wiping as a cleanup method.* EPA began the study with the goal of evaluating the effectiveness of a triple-rinse performance standard for decontamination of various types of surfaces where spills of askarel or mineral oil contaminated with PCBs have occurred. The cleaning agents tested were a water-based industrial cleaner (Penetone Power Cleaner 155) and kerosene, which are both widely used. A set of six rinses were performed on steel, wood, concrete, and asphalt 1 day after spilling a known amount of PCBs on the surfaces. Another set of six rinses was performed on each surface 8 days after spilling a known amount of PCBs on the surface.

The rinses were relatively effective in cleaning askarel spills on steel and in cleaning mineral oil from all surfaces (because of the low initial concentration of PCBs in mineral oil). However, six rinses with the industrial cleaner did not



successfully remove askarel fluid from asphalt, wood, or concrete. Further, the PCBs and the solvent washed through the wood, concrete, and asphalt, and distributed the PCBs into the material. This has caused EPA to question the advisability of setting a surface concentration for nonimpervious materials. Absent information on whether or not the PCBs absorbed into the material later come back to the surface and become available for exposure, EPA must assume that the absorbed PCBs provide a continuing source of exposure until the total amount of PCBs in the material is depleted.

EPA also found that the Penetone Power Cleaner was significantly less effective than the organic solvent in reducing the concentration of PCBs. Anecdotal information, however, suggests that the detergent cleaner may be more effective on soiled surfaces because of the tendency of PCBs to bind to dirt.

These observations have led to some determinations and raised several issues. Any comments or data in these areas are welcome.

a. EPA has determined that a procedural performance specifying one to three washes/rinses on solid surfaces within a few days after the spill occurs will result in adequate decontamination of mineral oil (50 to 499 ppm PCBs) spills on hard surfaces (including wood, asphalt, and concrete).

b. EPA has determined that water-based solvents may not be effective in removing PCBs from hard surfaces. Seven days after the occurrence of a spill, the efficacy of water-based rinses appeared to decrease markedly even on steel (some of the reduced effectiveness of the water-based solvent after 7 days may be due to the loss of PCBs from the surface through volatilization). EPA is currently performing a second phase of the solvent-rinse study with an organic solvent used widely in industry.

c. EPA has determined that when a spill of PCBs occurs on nonimpervious hard surfaces, the PCBs are absorbed into the material and may later become available for exposure. In the absence of adequate information, the Agency must presume that these PCBs do provide a source of exposure. The Agency solicits any available data in this area.

d. Therefore, for PCB spills on nonimpervious surfaces, the Agency considered (1) requiring removal and decontamination to a ppm standard, or (2) some combination of a wipe standard and encapsulation. EPA solicits available information on the costs of removing hard surfaces and the efficacy of encapsulation in preventing

future exposures to PCBs which have been absorbed into materials such as concrete, wood, or asphalt. In its spills cleanup policy the Agency has allowed an encapsulation option on low contact surfaces for iterative purposes. EPA may not retain such an option if no information on the relative cost, effectiveness, and durability of encapsulation becomes available.

3. *Cost of cleanup.* The cost estimates for decontamination of soil and other solid materials to various levels (as discussed under Unit VII.B) were derived from limited available information. While the Agency has received information on the costs of actual cleanups, it is difficult to extrapolate information from these data because very little is known about the cleanup methods used, the time lapse between the spill and the cleanup effort, the amount spilled, and the size of the spill area.

In order to develop a more sound data base for comparing the costs of cleanup to various levels in soil, the Agency modeled the vertical and lateral spread of spilled PCBs in soil over time, using assumptions which maximize the spread of PCBs. These data on the distribution of PCB concentrations in the soil are being used to solicit information from cleanup firms on the incremental cost of cleanup to various levels.

Any available data on the incremental costs of decontamination to various levels are welcome. Such data will be most helpful if accompanied by the following information: (1) The amount and concentration of PCBs spilled, (2) the area and depth of the original contamination and the area cleaned, (3) the amount of soil or other material removed or the type of cleanup performed on hard surfaces, (4) postcleanup sampling data, (5) the amount of time between spill occurrence and initiation of cleanup, and (6) some description of the cleanup procedures (e.g., initial efforts to contain the spill or methods used to prevent the spreading of contamination during cleanup efforts). EPA especially needs data on the costs associated with cleanup of hard surfaces (see discussion in previous unit).

4. *Cleanup standards for higher-risk situations.* The discussion under Unit VII.D details the Agency's rationale for limitations on the scope of the policy. The Agency believes that some small percentage of spills will warrant more stringent cleanup requirements than specified in the TSCA policy because of additional routes of exposure or significantly greater exposures than those associated with typical PCB spills.

Therefore, certain spill situations are excluded from the scope of this policy. The spill situations which the TSCA policy excludes from automatic application of the numerical cleanup requirements in the policy (i.e., spills directly into water, sewers, vegetable gardens, and grazing areas and spills which contaminate surface waters prior to cleanup) are those which will always present routes of exposure to PCBs which are not associated with the typical spills considered in developing the TSCA policy. The TSCA policy indicates exceptional spill situations may not always require more extensive cleanup. However, they will always require some level of site-specific analysis to determine appropriate cleanup measures.

In addition, the TSCA policy discusses other spill situations which may warrant the use of EPA authority to require more stringent requirements (e.g., where depth to ground water, type of soil, and the presence of a shallow well may pose exceptionally high potential for ground water contamination by residual PCBs; spill situations involving significantly larger areas of contamination than those assumed in developing this policy; spills resulting from violent equipment rupture during which PCDFs and/or PCDDs were formed; and spills onto farmland on which root crops are grown). The TSCA policy provides that in such situations the Regional Administrator may require cleanup in addition to that required by the TSCA policy.

EPA does not currently have sufficient information on the factors which must be considered in determining the type and degree of cleanup in such situations. Therefore, while EPA headquarters will provide guidance to the EPA regional offices to the extent possible on a case-by-case basis, the TSCA policy does not specify cleanup measures for these spill scenarios. EPA solicits available data on such spill situations in order to provide better guidance to the regions and to develop uniform guidance for such situations where appropriate.

This document was submitted for review to the Office of Management and Budget (OMB).

## Other Statutory Requirements

### Regulatory Flexibility Act

The TSCA policy will have an insignificant impact on small entities as described in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).



*Paperwork Reduction Act*

The TSCA policy reiterates certain recordkeeping requirements for the disposal of PCBs which were approved under OMB control number 2070-0008. Some additional recordkeeping and reporting will be added through the rulemaking process; these requirements will be submitted to OMB for clearance.

**List of Subjects in 40 CFR Part 761**

Hazardous substances, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

Dated: March 20, 1987.

Lee M. Thomas,  
Administrator.

**PART 761—[AMENDED]**

Therefore, 40 CFR Chapter I Part 761 is amended as follows:

1. The authority citation for Part 761 is revised to read as follows:

**Authority:** 15 U.S.C. 2605, 2607, and 2611; Subpart G is also issued under 15 U.S.C. 2614 and 2616.

2. Subpart G, consisting at this time of §§ 761.120, 761.123, 761.125, 761.130, and 761.135, is added to read as follows:

**Subpart G—PCB Spill Cleanup Policy**

Sec.

761.120	Scope.
761.123	Definitions.
761.125	Requirements for PCB spill cleanup.
761.130	Sampling requirements.
761.135	Effect of compliance with this policy and enforcement.

**Subpart G—PCB Spill Cleanup Policy****§ 761.120 Scope.**

(a) *General.* This policy establishes criteria EPA will use to determine the adequacy of the cleanup of spills resulting from the release of materials containing PCBs at concentrations of 50 ppm or greater. The policy applies to spills which occur after May 4, 1987.

(1) Existing spills (spills which occurred prior to May 4, 1987, are excluded from the scope of this policy for two reasons:

(i) For old spills which have already been discovered, this policy is not intended to require additional cleanup where a party has already cleaned a spill in accordance with requirements imposed by EPA through its regional offices, nor is this policy intended to interfere with ongoing litigation of enforcement actions which bring into issue PCB spill cleanup.

(ii) EPA recognizes that old spills which are discovered after the effective date of this policy will require site-by-site evaluation because of the likelihood

that the site involves more pervasive PCB contamination than fresh spills and because old spills are generally more difficult to clean up than fresh spills (particularly on porous surfaces such as concrete). Therefore, spills which occurred before the effective date of this policy are to be decontaminated to requirements established at the discretion of EPA, usually through its regional offices.

(2) EPA expects most PCB spills subject to the TSCA PCB regulations to conform to the typical spill situations considered in developing this policy. This policy does, however, exclude from application of the final numerical cleanup standards certain spill situations from its scope: Spills directly into surface waters, drinking water, sewers, grazing lands, and vegetable gardens. These types of spills are subject to final cleanup standards to be established at the discretion of the regional office. These spills are, however, subject to the immediate notification requirements and measures to minimize further environmental contamination.

(3) For all other spills, EPA generally expects the decontamination standards of this policy to apply. Occasionally, some small percentage of spills covered by this policy may warrant more stringent cleanup requirements because of additional routes of exposure or significantly greater exposures than those assumed in developing the final cleanup standards of this policy. While the EPA regional offices have the authority to require additional cleanup in these circumstances, the Regional Administrator must first make a finding based on the specific facts of a spill that additional cleanup must occur to prevent unreasonable risk. In addition, before a final decision is made to require additional cleanup, the Regional Administrator must notify the Director, Office of Toxic Substances at Headquarters of his/her finding and the basis for the finding.

(4) There may also be exceptional spill situations that requires less stringent cleanup or a different approach to cleanup because of factors associated with the particular spill. These factors may mitigate expected exposures and risks or make cleanup to these requirements impracticable.

(b) *Spills that may require more stringent cleanup levels.* For spills within the scope of this policy, EPA generally retains, under § 761.135, the authority to require additional cleanup upon finding that, despite good faith efforts by the responsible party, the numerical decontamination levels in the policy have not been met. In addition,

EPA foresees the possibility of exceptional spill situations in which site-specific risk factors may warrant additional cleanup to more stringent numerical decontamination levels than are required by the policy. In these situations, the Regional Administrator has the authority to require cleanup to levels lower than those included in this policy upon finding that further cleanup must occur to prevent unreasonable risk. The Regional Administrator will consult with the Director, Office of Toxic Substances, prior to making such a finding.

(1) For example, site-specific characteristics, such as short depth to ground water, type of soil, or the presence of a shallow well, may pose exceptionally high potential for ground water contamination by PCBs remaining after cleanup to the standards specified in this policy. Spills that pose such a high degree of potential for ground water contamination have not been excluded from the policy under paragraph (d) of this section because the presence of such potential may not be readily apparent. EPA feels that automatically excluding such spills from the scope of the policy could result in the delay of cleanup—a particularly undesirable outcome if potential ground water contamination is, in fact, a significant concern.

(2) In those situations, the Regional Administrator may require cleanup in addition to that required under § 761.125 (b) and (c). However, the Regional Administrator must first make a finding, based on the specific facts of a spill, that additional cleanup is necessary to prevent unreasonable risk. In addition, before making a final decision on additional cleanup, the Regional Administrator must notify the Director of the Office of Toxic Substances of his finding and the basis for the finding.

(c) *Flexibility to allow less stringent or alternative requirements.* EPA retains the flexibility to allow less stringent or alternative decontamination measures based upon site-specific considerations. EPA will exercise this flexibility if the responsible party demonstrates that cleanup to the numerical decontamination levels is clearly unwarranted because of risk-mitigating factors, that compliance with the procedural requirements or numerical standards in the policy is impracticable at a particular site, or that site-specific characteristics make the costs of cleanup prohibitive. The Regional Administrator will notify the Director of OTS of any decision and the basis for the decision to allow less stringent cleanup. The purpose of this notification



is to enable the Director of OTS to ensure consistency of spill cleanup standards under special circumstances across the regions.

(d) *Excluded spills.* (1) Although the spill situations in paragraphs (d)(2)(i) through (vi) of this section are excluded from the automatic application of final decontamination standards under § 761.125 (b) and (c), the general requirements under § 761.125(a) do apply to these spills. In addition, all of these excluded situations require practicable, immediate actions to contain the area of contamination. While these situations may not always require more stringent cleanup measures, the Agency is excluding these scenarios because they will always involve significant factors that may not be adequately addressed by cleanup standards based upon typical spill characteristics.

(2) For the spill situations in paragraphs (d)(2)(i) through (vi) of this section, the responsible party shall decontaminate the spill in accordance with site-specific requirements established by the EPA regional offices.

(i) Spills that result in the direct contamination of surface waters (surface waters include, but are not limited to, "waters of the United States" as defined in Part 122 of this chapter, ponds, lagoons, wetlands, and storage reservoirs).

(ii) Spills that result in the direct contamination of sewers or sewage treatment systems.

(iii) Spills that result in the direct contamination of any private or public drinking water sources or distribution systems.

(iv) Spills which migrate to and contaminate surface waters, sewers, or drinking water supplies before cleanup has been completed in accordance with this policy.

(v) Spills that contaminate animal grazing lands.

(vi) Spills that contaminate vegetable gardens.

(e) *Relationship of policy to other statutes.* (1) This policy does not affect cleanup standards or requirements for the reporting of spills imposed, or to be imposed, under other Federal statutory authorities, including but not limited to, the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA). Where more than one requirement applies, the stricter standard must be met.

(2) The Agency recognizes that the existence of this policy will inevitably

result in attempts to apply the standards to situations within the scope of other statutory authorities. However, other statutes require the Agency to consider different or alternative factors in determining appropriate corrective actions. In addition, the types and magnitudes of exposures associated with sites requiring corrective action under other statutes often involve important differences from those expected of the typical, electrical equipment-type spills considered in developing this policy. Thus, cleanups under other statutes, such as RCRA corrective actions or remedial and response actions under SARA may result in different outcomes.

#### § 761.123 Definitions.

For purposes of this policy, certain words and phrases are used to denote specific materials, procedures, or circumstances. The following definitions are provided for purposes of clarity and are not to be taken as exhaustive lists of situations and materials covered by the policy.

"Double wash/rinse" means a minimum requirement to cleanse solid surfaces (both impervious and nonimpervious) two times with an appropriate solvent or other material in which PCBs are at least 5 percent soluble (by weight). A volume of PCB-free fluid sufficient to cover the contaminated surface completely must be used in each wash/rinse. The wash/rinse requirement does not mean the mere spreading of solvent or other fluid over the surface, nor does the requirement mean a once-over wipe with a soaked cloth. Precautions must be taken to contain any runoff resulting from the cleansing and to dispose properly of wastes generated during the cleansing.

"High-concentration PCBs" means PCBs that contain 500 ppm or greater PCBs, or those materials which EPA requires to be assumed to contain 500 ppm or greater PCBs in the absence of testing.

"High-contact industrial surface" means a surface in an industrial setting which is repeatedly touched, often for relatively long periods of time. Manned machinery and control panels are examples of high-contact industrial surfaces. High-contact industrial surfaces are generally of impervious solid material. Examples of low-contact industrial surfaces include ceilings, walls, floors, roofs, roadways and sidewalks in the industrial area, utility poles, unmanned machinery, concrete pads beneath electrical equipment, curbing, exterior structural building components, indoor vaults, and pipes.

"High-contact residential/commercial surface" means a surface in a residential/commercial area which is repeatedly touched, often for relatively long periods of time. Doors, wall areas below 6 feet in height, uncovered flooring, windowsills, fencing, bannisters, stairs, automobiles, and children's play areas such as outdoor patios and sidewalks are examples of high-contact residential/commercial surfaces. Examples of low-contact residential/commercial surfaces include interior ceilings, interior wall areas above 6 feet in height, roofs, asphalt roadways, concrete roadways, wooden utility poles, unmanned machinery, concrete pads beneath electrical equipment, curbing, exterior structural building components (e.g., aluminum/vinyl siding, cinder block, asphalt tiles), and pipes.

"Impervious solid surfaces" means solid surfaces which are nonporous and thus unlikely to absorb spilled PCBs within the short period of time required for cleanup of spills under this policy. Impervious solid surfaces include, but are not limited to, metals, glass, aluminum siding, and enameled or laminated surfaces.

"Low-concentration PCBs" means PCBs that are tested and found to contain less than 500 ppm PCBs, or those PCB-containing materials which EPA requires to be assumed to be at concentrations below 500 ppm (i.e., untested mineral oil dielectric fluid).

"Nonimpervious solid surfaces" means solid surfaces which are porous and are more likely to absorb spilled PCBs prior to completion of the cleanup requirements prescribed in this policy. Nonimpervious solid surfaces include, but are not limited to, wood, concrete, asphalt, and plasterboard.

"Nonrestricted access areas" means any area other than restricted access, outdoor electrical substations, and other restricted access locations, as defined in this section. In addition to residential/commercial areas, these areas include unrestricted access rural areas (areas of low density development and population where access is uncontrolled by either man-made barriers or naturally occurring barriers, such as rough terrain, mountains, or cliffs).

"Other restricted access (nonstation) locations" means areas other than electrical substations that are at least 0.1 kilometer (km) from a residential/commercial area and limited by man-made barriers (e.g., fences and walls) to substantially limited by naturally occurring barriers such as mountains, cliffs, or rough terrain. These areas generally include industrial



facilities and extremely remote rural locations. (Areas where access is restricted but are less than 0.1 km from a residential/commercial area are considered to be residential/commercial areas.)

"Outdoor electrical substations" means outdoor, fenced-off, and restricted access areas used in the transmission and/or distribution of electrical power. Outdoor electrical substations restrict public access by being fenced or walled off as defined under § 761.30(1)(1)(ii). For purposes of this TSCA policy, outdoor electrical substations are defined as being located at least 0.1 km from a residential/commercial area. Outdoor fenced-off and restricted access areas used in the transmission and/or distribution of electrical power which are located less than 0.1 km from a residential/commercial area are considered to be residential/commercial areas.

"PCBs" means polychlorinated biphenyls as defined under § 761.3. As specified under § 761.1(b), no requirements may be avoided through dilution of the PCB concentration.

"Requirements and standards" means:

(1) "Requirements" as used in this policy refers to both the procedural responses and numerical decontamination levels set forth in this policy as constituting adequate cleanup of PCBs.

(2) "Standards" refers to the numerical decontamination levels set forth in this policy.

"Residential/commercial areas" means those areas where people live or reside, or where people work in other than manufacturing or farming industries. Residential areas include housing and the property on which housing is located, as well as playgrounds, roadways, sidewalks, parks, and other similar areas within a residential community. Commercial areas are typically accessible to both members of the general public and employees and include public assembly properties, institutional properties, stores, office buildings, and transportation centers.

"Responsible party" means the owner of the PCB equipment, facility, or other source of PCBs or his/her designated agent (e.g., a facility manager or foreman).

"Soil" means all vegetation, soils and other ground media, including but not limited to, sand, grass, gravel, and oyster shells. It does not include concrete and asphalt.

"Spill" means both intentional and unintentional spills, leaks, and other uncontrolled discharges where the

release results in any quantity of PCBs running off or about to run off the external surface of the equipment or other PCB source, as well as the contamination resulting from those releases. This policy applies to spills of 50 ppm or greater PCBs. The concentration of PCBs spilled is determined by the PCB concentration in the material spilled as opposed to the concentration of PCBs in the material onto which the PCBs were spilled. Where a spill of untested mineral oil occurs, the oil is presumed to contain greater than 50 ppm, but less than 500 ppm PCBs and is subject to the relevant requirements of this policy.

"Spill area" means the area of soil on which visible traces of the spill can be observed plus a buffer zone of 1 foot beyond the visible traces. Any surface or object (e.g., concrete sidewalk or automobile) within the visible traces area or on which visible traces of the spilled material are observed is included in the spill area. This area represents the minimum area assumed to be contaminated by PCBs in the absence of precleanup sampling data and is thus the minimum area which must be cleaned.

"Spill boundaries" means the actual area of contamination as determined by postcleanup verification sampling or by precleanup sampling to determine actual spill boundaries. EPA can require additional cleanup when necessary to decontaminate all areas within the spill boundaries to the levels required in this policy (e.g., additional cleanup will be required if postcleanup sampling indicates that the area decontaminated by the responsible party, such as the spill area as defined in this section, did not encompass the actual boundaries of PCB concentration).

"Standard wipe test" means, for spills of high-concentration PCBs on solid surfaces, a cleanup to numerical surface standards and sampling by a standard wipe test to verify that the numerical standards have been met. This definition constitutes the minimum requirements for an appropriate wipe testing protocol. A standard-size template (10 centimeters (cm) x 10 cm) will be used to delineate the area of cleanup; the wiping medium will be a gauze pad or glass wool of known size which has been saturated with hexane. It is important that the wipe be performed very quickly after the hexane is exposed to air. EPA strongly recommends that the gauze (or glass wool) be prepared with hexane in the laboratory and that the wiping medium be stored in sealed glass vials until it is used for the wipe test. Further, EPA

requires the collection and testing of field blanks and replicates.

#### § 761.125 Requirements for PCB spill cleanup.

(a) *General.* Unless expressly limited, the reporting, disposal, and precleanup sampling requirements in paragraphs (a) (1) through (3) of this section apply to all spills of PCBs at concentrations of 50 ppm or greater which are subject to decontamination requirements under TSCA, including those spills listed under § 761.120(b) which are excluded from the cleanup standards at paragraphs (b) and (c) of this section.

(1) *Reporting requirements.* The reporting in paragraph (a)(1) (i) through (iv) of this section is required in addition to applicable reporting requirements under the Clean Water Act (CWA) or the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA). For example, under the National Contingency Plan all spills involving 10 pounds or more of PCB material must currently be reported to the National Response Center (1-800-424-8802). The requirements in paragraphs (a)(1) (i) through (iv) of this section are designed to be consistent with existing reporting requirements to the extent possible so as to minimize reporting burdens on governments as well as the regulated community.

(i) Where a spill directly contaminates surface water, sewers, or drinking water supplies, as discussed under § 761.120(d), the responsible party shall notify the appropriate EPA regional office (the Office of Pesticides and Toxic Substances Branch) and obtain guidance for appropriate cleanup measures in the shortest possible time after discovery, but in no case later than 24 hours after discovery.

(ii) Where a spill directly contaminates grazing lands or vegetable gardens, as discussed under § 761.120(d), the responsible party shall notify the appropriate EPA regional office (the Office of Pesticides and Toxic Substances Branch) and proceed with the immediate requirements specified under paragraph (b) or (c) of this section, depending on the source of the spill, in the shortest possible time after discovery, but in no case later than 24 hours after discovery.

(iii) Where a spill exceeds 10 pounds of PCB material (generally 1 gallon of PCB dielectric fluid) and is not addressed in paragraph (a)(1) (i) or (ii) of this section, the responsible party will notify the appropriate EPA regional office and proceed to decontaminate the spill area in accordance with this TSCA policy in the shortest possible time after



discovery, but in no case later than 24 hours after discovery. For purposes of the notification requirement, the 10 pounds are measured by the weight of the PCB-containing material spilled rather than by the weight of only the PCBs spilled.

(iv) Spills of 10 pounds or less, which are not addressed in paragraph (a)(1)(i) or (ii) of this section, must be cleaned up in accordance with this policy (in order to avoid EPA enforcement liability), but notification of EPA is not required.

(2) *Disposal of cleanup debris and materials.* All concentrated soils, solvents, rags, and other materials resulting from the cleanup of PCBs under this policy shall be properly stored, labeled, and disposed of in accordance with the provisions of § 761.60.

(3) *Determination of spill boundaries in the absence of visible traces.* For spills where there are insufficient visible traces yet there is evidence of a leak or spill, the boundaries of the spill are to be determined by using a statistically based sampling scheme.

(b) *Requirements for cleanup of low-concentration spills which involve less than 1 pound of PCBs by weight (less than 270 gallons of untested mineral oil)—(1) Decontamination requirements.* Spills of less than 270 gallons of untested mineral oil, low-concentration PCBs, as defined under § 761.123, which involve less than 1 pound of PCBs by weight (e.g., less than 270 gallons of untested mineral oil containing less than 500 ppm PCBs) shall be cleaned in the following manner:

(i) Solid surfaces must be double washed/rinsed (as defined under § 761.123); except that all indoor, residential surfaces other than vault areas must be cleaned to 10 micrograms per 100 square centimeters (10 µg/100 cm<sup>2</sup>) by standard commercial wipe tests.

(ii) All soil within the spill area (i.e., visible traces of soil and a buffer of 1 lateral foot around the visible traces) must be excavated, and the ground be restored to its original configuration by back-filling with clean soil (i.e., containing less than 1 ppm PCBs).

(iii) Requirements of paragraph (b)(1)(i) and (ii) of this section must be completed within 48 hours after the responsible party was notified or became aware of the spill.

(2) *Effect of emergency or adverse weather.* Completion of cleanup may be delayed beyond 48 hours in case of circumstances including but not limited to, civil emergency, adverse weather conditions, lack of access to the site, and emergency operating conditions. The occurrence of a spill on a weekend or overtime costs are not acceptable

reasons to delay response. Completion of cleanup may be delayed only for the duration of the adverse conditions. If the adverse weather conditions, or time lapse due to other emergency, has left insufficient visible traces, the responsible party must use a statistically based sampling scheme to determine the spill boundaries as required under paragraph (a)(3) of this section.

(3) *Records and certification.* At the completion of cleanup, the responsible party shall document the cleanup with records and certification of decontamination. The records and certification must be maintained for a period of 5 years. The records and certification shall consist of the following:

(i) Identification of the source of the spill (e.g., type of equipment).

(ii) Estimated or actual date and time of the spill occurrence.

(iii) The date and time cleanup was completed or terminated (if cleanup was delayed by emergency or adverse weather: the nature and duration of the delay).

(iv) A brief description of the spill location.

(v) Precleanup sampling data used to establish the spill boundaries if required because of insufficient visible traces, and a brief description of the sampling methodology used to establish the spill boundaries.

(vi) A brief description of the solid surfaces cleaned and of the double wash/rinse method used.

(vii) Approximate depth of soil excavation and the amount of soil removed.

(viii) A certification statement signed by the responsible party stating that the cleanup requirements have been met and that the information contained in the record is true to the best of his/her knowledge.

(ix) While not required for compliance with this policy, the following information would be useful if maintained in the records:

(A) Additional pre- or post-cleanup sampling.

(B) The estimated cost of the cleanup by man-hours, dollars, or both.

(C) *Requirements for cleanup of high-concentration spills and low-concentration spills involving 1 pound or more PCBs by weight (270 gallons or more of untested mineral oil).* Cleanup of low-concentration spills involving 1 lb or more PCBs by weight and of all spills of materials other than low-concentration materials shall be considered complete if all of the immediate requirements, cleanup standards, sampling, and recordkeeping

requirements of paragraphs (c) (1) through (5) of this section are met.

(1) *Immediate requirements.* The four actions in paragraphs (c)(1)(i) through (iv) of this section must be taken as quickly as possible and within no more than 24 hours (or within 48 hours for PCB Transformers) after the responsible party was notified or became aware of the spill, except that actions described in paragraphs (c)(1)(ii) through (iv) of this section can be delayed beyond 24 hours if circumstances (e.g., civil emergency, hurricane, tornado, or other similar adverse weather conditions, lack of access due to physical impossibility, or emergency operating conditions) so require for the duration of the adverse conditions. The occurrence of a spill on a weekend or overtime costs are not acceptable reasons to delay response. Owners of spilled PCBs who have delayed cleanup because of these types of circumstances must keep records documenting the fact that circumstances precluded rapid response.

(i) The responsible party shall notify the EPA regional office and the NRC as required by § 761.125(a)(1) or by other applicable statutes.

(ii) The responsible party shall effectively cordon off or otherwise delineate and restrict an area encompassing any visible traces plus a 3-foot buffer and place clearly visible signs advising persons to avoid the area to minimize the spread of contamination as well as the potential for human exposure.

(iii) The responsible party shall record and document the area of visible contamination, noting the extent of the visible trace areas and the center of the visible trace area. If there are no visible traces, the responsible party shall record this fact and contact the regional office of the EPA for guidance in completing statistical sampling of the spill area to establish spill boundaries.

(iv) The responsible party shall initiate cleanup of all visible traces of the fluid on hard surfaces and initiate removal of all visible traces of the spill on soil and other media, such as gravel, sand, oyster shells, etc.

(v) If there has been a delay in reaching the site and there are insufficient visible traces of PCBs remaining at the spill site, the responsible party must estimate (based on the amount of material missing from the equipment or container) the area of the spill and immediately cordon off the area of suspect contamination. The responsible party must then utilize a statistically based sampling scheme to identify the boundaries of the spill area as soon as practicable.



(vi) Although this policy requires certain immediate actions, as described in paragraphs (c)(1)(i) through (iv) of this section, EPA is not placing a time limit on completion of the cleanup effort since the time required for completion will vary from case to case. However, EPA expects that decontamination will be achieved promptly in all cases and will consider promptness of completion in determining whether the responsible party made good faith efforts to clean up in accordance with this policy.

(2) *Requirements for decontaminating spills in outdoor electrical substations.* Spills which occur in outdoor electrical substations, as defined under § 761.123, shall be decontaminated in accordance with paragraphs (c)(2)(i) and (ii) of this section. Conformance to the cleanup standards under paragraphs (c)(2)(i) and (ii) of this section shall be verified by post-cleanup sampling as specified under § 761.130. At such times as outdoor electrical substations are converted to another use, the spill site shall be cleaned up to the nonrestricted access requirements under paragraph (c)(4) of this section.

(i) Contaminated solid surfaces (both impervious and non-impervious) shall be cleaned to a PCB concentration of 100 micrograms ( $\mu\text{g}$ )/100 square centimeters ( $\text{cm}^2$ ) (as measured by standard wipe tests).

(ii) At the option of the responsible party, soil contaminated by the spill will be cleaned either to 25 ppm PCBs by weight, or to 50 ppm PCBs by weight provided that a label or notice is visibly placed in the area. Upon demonstration by the responsible party that cleanup to 25 ppm or 50 ppm will jeopardize the integrity of the electrical equipment at the substation, the EPA regional office may establish an alternative cleanup method or level and place the responsible party on a reasonably timely schedule for completion of cleanup.

(3) *Requirements for decontaminating spills in other restricted access areas.* Spills which occur in restricted access locations other than outdoor electrical substations, as defined under § 761.123, shall be decontaminated in accordance with paragraph (c)(3)(i) through (v) of this section. Conformance to the cleanup standards in paragraph (c)(3)(i) through (v) of this section shall be verified by postcleanup sampling as specified under § 761.130. At such times as restricted access areas other than outdoor electrical substations are converted to another use, the spill site shall be cleaned up to the nonrestricted access area requirements of paragraph (c)(4) of this section.

(i) High-contact solid surfaces, as defined under § 761.163 shall be cleaned to 10  $\mu\text{g}/100 \text{ cm}^2$  (as measured by standard wipe tests).

(ii) Low-contact, indoor, impervious solid surfaces will be decontaminated to 10  $\mu\text{g}/100 \text{ cm}^2$ .

(iii) At the option of the responsible party, low-contact, indoor, nonimpervious surfaces will be cleaned either to 10  $\mu\text{g}/100 \text{ cm}^2$  or to 100  $\mu\text{g}/100 \text{ cm}^2$  and encapsulated. The Regional Administrator, however, retains the authority to disallow the encapsulation option for a particular spill situation upon finding that the uncertainties associated with that option pose special concerns at that site. That is, the Regional Administrator would not permit encapsulation if he/she determined that if the encapsulation failed the failure would create an imminent hazard at the site.

(iv) Low-contact, outdoor surfaces (both impervious and nonimpervious) shall be cleaned to 100  $\mu\text{g}/100 \text{ cm}^2$ .

(v) Soil contaminated by the spill will be cleaned to 25 ppm PCBs by weight.

(4) *Requirements for decontaminating spills in nonrestricted access areas.* Spills which occur in nonrestricted access locations, as defined under § 761.123, shall be decontaminated in accordance with paragraphs (c)(4)(i) through (v) of this section. Conformance to the cleanup standards at paragraphs (c)(4)(i) through (v) of this section shall be verified by postcleanup sampling as specified under § 761.130.

(i) Furnishings, toys, and other easily replaceable household items shall be disposed of in accordance with the provisions of § 761.60 and replaced by the responsible party.

(ii) Indoor solid surfaces and high-contact outdoor solid surfaces, defined as high contact residential/commercial surfaces under § 761.123, shall be cleaned to 10  $\mu\text{g}/100 \text{ cm}^2$  (as measured by standard wipe tests).

(iii) Indoor vault areas and low-contact, outdoor, impervious solid surfaces shall be decontaminated to 10  $\mu\text{g}/100 \text{ cm}^2$ .

(iv) At the option of the responsible party, low-contact, outdoor, nonimpervious solid surfaces shall be either cleaned to 10  $\mu\text{g}/100 \text{ cm}^2$  or cleaned to 100  $\mu\text{g}/100 \text{ cm}^2$  and encapsulated. The Regional Administrator, however, retains the authority to disallow the encapsulation option for a particular spill situation upon finding that the uncertainties associated with that option pose special concerns at that site. That is, the Regional Administrator would not permit encapsulation if he/she

determined that if the encapsulation failed the failure would create an imminent hazard at the site.

(v) Soil contaminated by the spill will be decontaminated to 10 ppm PCBs by weight provided that soil is excavated to a minimum depth of 10 inches. The excavated soil will be replaced with clean soil, i.e., containing less than 1 ppm PCBs, and the spill site will be restored (e.g., replacement of turf).

(5) *Records.* The responsible party shall document the cleanup with records of decontamination. The records must be maintained for a period of 5 years. The records and certification shall consist of the following:

(i) Identification of the source of the spill, e.g., type of equipment.

(ii) Estimated or actual date and time of the spill occurrence.

(iii) The date and time cleanup was completed or terminated (if cleanup was delayed by emergency or adverse weather; the nature and duration of the delay).

(iv) A brief description of the spill location and the nature of the materials contaminated. This information should include whether the spill occurred in an outdoor electrical substation, other restricted access location, or in a nonrestricted access area.

(v) Precleanup sampling data used to establish the spill boundaries if required because of insufficient visible traces and a brief description of the sampling methodology used to establish the spill boundaries.

(vi) A brief description of the solid surfaces cleaned.

(vii) Approximate depth of soil excavation and the amount of soil removed.

(viii) Postcleanup verification sampling data and, if not otherwise apparent from the documentation, a brief description of the sampling methodology and analytical technique used.

(ix) While not required for compliance with this policy, information on the estimated cost of cleanup (by man-hours, dollars, or both) would be useful if maintained in the records.

#### § 761.130 Sampling requirements.

Postcleanup sampling is required to verify the level of cleanup under § 761.125(c) (2) through (4). The responsible party may use any statistically valid, reproducible, sampling scheme (either random samples or grid samples) provided that the requirements of paragraphs (a) and (b) of this section are satisfied.

(a) The sampling area is the greater of (1) an area equal to the area cleaned



plus an additional 1-foot boundary, or (2) an area 20 percent larger than the original area of contamination.

(b) The sampling scheme must ensure 95 percent confidence against false positives.

(c) The number of samples must be sufficient to ensure that areas of contamination of a radius of 2 feet or more within the sampling area will be detected, except that the minimum number of samples is 3 and the maximum number of samples is 40.

(d) The sampling scheme must include calculation for expected variability due to analytical error.

(e) EPA recommends the use of a sampling scheme developed by the Midwest Research Institute (MRI) for use in EPA enforcement inspections: "Verification of PCB Spill Cleanup by Sampling and Analysis." Guidance for the use of this sampling scheme is available in the MRI report "Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup." Both the MRI sampling scheme and the guidance document are available from the TSCA Assistance Office, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, DC 20460 (202-554-1404). The major advantage of this sampling scheme is that it is designed to characterize the degree of contamination within the entire sampling area with a high degree of

confidence while using fewer samples than any other grid or random sampling scheme. This sampling scheme also allows some sites to be characterized on the basis of composite samples.

(f) EPA may, at its discretion, take samples from any spill site. If EPA's sampling indicates that the remaining concentration level exceeds the required level, EPA will require further cleanup. For this purpose, the numerical level of cleanup required for spills cleaned in accordance with § 761.125(b) is deemed to be the equivalent of numerical cleanup requirements required for cleanups under § 761.125(c)(2) through (4). Using its best engineering judgment, EPA may sample a statistically valid random or grid sampling technique, or both. When using engineering judgment or random "grab" samples, EPA will take into account that there are limits on the power of a grab sample to dispute statistically based sampling of the type required of the responsible party. EPA headquarters will provide guidance to the EPA regions on the degree of certainty associated with various grab sample results.

**§ 761.135 Effect of compliance with this policy and enforcement.**

(a) Although a spill of material containing 50 ppm or greater PCBs is considered improper PCB disposal, this policy establishes requirements that

EPA considers to be adequate cleanup of the spilled PCBs. Cleanup in accordance with this policy means compliance with the procedural as well as the numerical requirements of this policy. Compliance with this policy creates a presumption against both enforcement action for penalties and the need for further cleanup under TSCA. The Agency reserves the right, however, to initiate appropriate action to compel cleanup where, upon review of the records of cleanup or EPA sampling following cleanup, EPA finds that the decontamination levels in the policy have not been achieved. The Agency also reserves the right to seek penalties where the Agency believes that the responsible party has not made a good faith effort to comply with all provisions of this policy, such as prompt notification of EPA of a spill, recordkeeping, etc.

(b) EPA's exercise of enforcement discretion does not preclude enforcement action under other provisions of TSCA or any other Federal statute. This includes, even in cases where the numerical decontamination levels set forth in this policy have been met, civil or criminal action for penalties where EPA believes the spill to have been the result of gross negligence or knowing violation.

[FR Doc. 87-7262 Filed 4-1-87; 8:45 am]

BILLING CODE 6560-50-M